87-677

No. _____

In The

Supreme Court Of The United States

OCTOBER TERM, 1987

TITUS J. CASAZZA,
Petitioner,

v.

JOAN O. HOLBROOK,
Respondent.

GALA H. NORDQUIST,
Petitioner,

v.

JOAN O. HOLBROOK,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT WITH APPENDIX

Of Counsel:

ELIZABETH A. GALLAGHER
EVELYN A. BARNUM
1377 Boulevard
New Haven, CT 06511
(203) 624-4165

WILLIAM F. GALLAGHER
1377 Boulevard
New Haven, CT 06511
(203) 624-4165
Counsel of Record

86pp

Printed by

Brescia's Printing Services, Inc.
66 Connecticut Boulevard
East Hartford, CT 06108
528-4254

QUESTIONS PRESENTED

1. Did the Connecticut Supreme Court's interpretation of this court's opinion in *Bose Corporation v. Consumers Union of United States, Inc.* result in its application of the incorrect standard of review of evidence of actual malice in a defamation action brought against two municipal tax assessors by another assessor?

2. What standard of appellate review applies to evidence of conflicting interpretations of state statutes where such evidence necessarily relates to the issue of malice as well as to that of truth or falsity?

3. Does correct application of the standard of independent review compel an appellate court to consider unrefuted evidence of absence of actual malice?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: **Page(s)**

INTRODUCTORY PRAYER

The petitioners, Titus J. Casazza and Gala H. Nordquist, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Connecticut, entered in the above-entitled proceeding on July 7, 1987. (Re-argument denied July 28, 1987.)

OPINION BELOW

The opinion of the Supreme Court of Connecticut is reported at 204 Connecticut 336, and is reprinted in the appendix hereto (A. pp. 1a–26a).

The Supreme Court of Connecticut's order denying the motion for reargument is not reported. The order is reprinted in the appendix hereto (A. p. 27a).

JURISDICTION

The judgment of the Supreme Court of Connecticut was entered on July 7, 1987 affirming the trial court's judgment on a jury verdict in favor of the respondent dated June 14, 1985. The Supreme Court of Connecticut denied a timely motion for reargument on July 28, 1987 and this petition for certiorari is being filed within 90 days of that date.

The jurisdiction of this court to review the judgment of the Supreme Court of Connecticut is invoked under 28 U.S.C. Sec. 1257(3) to determine whether the appropriate standard of review required by the First Amendment was applied in this defamation action brought by a public official.

How the Federal Question was Presented

At trial, the petitioners requested a charge on actual malice based on the standard enunciated in *New York Times v. Sullivan*, 376 U.S. 254, 279-280, 84 S.Ct. 710, 11 L. Ed. 2d 686 (1964) (A. pp. 28a-34a). The question of actual malice was properly preserved for review by the Supreme Court of Connecticut on appeal in the petitioners' preliminary statement of issues seeking review of the trial court's refusal to direct a verdict for the defendants or to set aside the plaintiff's verdict where the evidence as a matter of law was clear and unequivocal that the petitioners' statements about the respondent's conduct as the Chairman of the Board of Tax Assessors were true and made without actual malice (A. p. 35a). The opinion of the Supreme Court of Connecticut affirming the jury's finding of actual malice without independent review of the undisputed evidence with regard to the petitioners' state of mind, reasonable belief in their statements, and absence of malice preserves the question for this court of whether the appropriate standard of review was applied.

CONSTITUTIONAL PROVISIONS INVOLVED

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. *U.S.C.A. Const. Amend. 1.*

STATUTES INVOLVED

Connecticut General Statutes Section 12-60. Correction of clerical error in assessment.

Any clerical omission or mistake in the assessment of taxes may be at any time corrected according to the fact by the assessors or board of tax review, and the tax shall be levied and collected according to such corrected assessment.

Connecticut General Statutes Section 12-62. Periodic revaluation of real estate.

(a) Commencing October 1, 1978, the assessors of all towns, consolidated towns and cities and consolidated towns and boroughs shall, no later than 10 years following the last preceding revaluation of all real property and every ten years after such revaluation, view all of the real estate of their respective municipalities, and shall revalue the same for assessment and, in the performance of these duties, except in any municipality where there is a single assessor, at least two of the assessors shall act together, and all valuations shall be separately approved by a majority of the assessors.

(b) During the conduct of any such revaluation in accordance with subsection (a) of this section in any municipality and during a period of not less than twelve months immediately following the date on which such revaluation becomes

effective, any criteria, guidelines, price schedules or statement of procedures used in such revaluation by the assessors or any person or organization performing such revaluation under contract, shall be available for public inspection in the assessor's office in such municipality in the manner provided for public records in subsection (a) of section 1-19. The provisions of this subsection shall be applicable to any such criteria, guidelines, price schedules or statement of procedures placed on file in such assessor's office on or after October 1, 1979.

STATEMENT OF THE CASE

This case involves the First Amendment rights of municipal tax assessors who charge a fellow assessor with official misconduct.

Respondent initiated defamation actions against the petitioners, claiming damages for harm to her reputation and pecuniary loss (A. pp. 36a–40a, 43a–47a). Petitioners filed answers and special defenses which were denied by respondent (A. pp. 41a–42a, 47a–48a).

The jury answered interrogatories and returned a general verdict for the respondent (A. pp. 49a–50a). The petitioners' motions to set aside the verdict and for judgment notwithstanding the verdict were denied, and judgment entered for the respondent. The petitioners appealed to the Supreme Court of Connecticut which rendered its opinion affirming the judgment of the trial court on July 7, 1987 (A. pp. 1a–26a). The petitioners' motion for reargument was denied by the court on July 28, 1987 (A. p. 27a).

Connecticut law requires a revaluation of real property every ten years in order to adjust the tax burden equitably among property owners (C.G.S. Sec. 12-62; T. p. 501). The Town of Westbrook hired an appraisal company to assist the Board of Assessors of Westbrook in its 1981 revaluation of all town property (T. pp. 45–46, 556, 1374). The role of the appraisal company was to do a physical inspection of each property and, taking such factors as location, size, zoning, etc. into consideration, set the fair market value for the property (T. pp. 42, 43, 131, 1374, 1375). Either a sales comparable or income approach was utilized in arriving at valuation (T. p. 43). The appraisal company's work was recorded on field cards and, after informal hearings for taxpayers, compiled in workbooks which were turned over to the assessors (T. pp. 53, 1374, 1375). An abstract of the revaluation data was prepared, and, upon signing by a majority of the Board of Tax Assessors, the abstract was validated and became the grand list which

established the property values for Westbrook (T. pp. 7b, 566, 567).[1] The abstract of the 1981 Westbrook revaluation was not required to be signed until February 28, 1982 (T. pp. 151, 819).

During the 1981 revaluation, the Board of Tax Assessors in Westbrook, Connecticut consisted of the respondent and the petitioners (T. pp. 40, 41). On February 23, 1982, petitioner Casazza began reviewing the assessors' books in preparation for signing the abstract (T. pp. 816, 817). During his review, he saw numerous field cards with erasures and handwriting other than that of appraisal company employees (T. pp. 820, 823, 824). The contract between the town and the appraisal company required that any value changes on field cards be written in by the appraisal company. The majority of the assessors had the final word on value, but any changes had to be written in by the company (T. pp. 1336, 1383, 1387).[2]

Casazza made a list of field cards with erasures and valuation changes because he wanted to ask the other assessors and the appraisal company about them, particularly since he had been consulted on only two of the changes (T. pp. 138a, 825–827). Respondent questioned him, and he stated that he did not want to sign the abstract until he had an opportunity to review the books (T. pp. 819, 820). The abstract was thereafter signed on February 23, 1982 by the respondent and petitioner Nordquist (T. pp. 819, 820). Casazza continued reviewing the books through March 2, 1982. He later noticed

---

[1] Due to an error in pagination of the Transcript of trial proceedings, Transcript references for May 29, 1985 are followed by the letter "a" and transcript references for May 30, 1985 are followed by the letter "b."

[2] Connecticut General Statutes Section 12-62(a) requires that all valuations be separately approved by a majority of the assessors (Brief p. 4).

that valuations were changed on an additional 27 field cards after the grand list was signed (T. pp. 138a, 855).[3]

Petitioner Casazza first discussed the changes and erasures with the respondent who admitted making them and then with petitioner Nordquist who became concerned because she had known about only six of the changes (T. pp. 144a, 569, 570, 579, 828). Casazza requested a meeting with the assessors and Richard Viogrande from the appraisal company (T. pp. 143a, 827–830). The meeting was set up for March 10, 1982 (T. p. 830). The matter came to the attention of the First Selectman of Westbrook, and he attended the March 10 meeting (T. pp. 143a, 829–830).[4] Some of the erasures and valuation changes were discussed, and Mr. Viogrande said he had not made those changes (T. p. 830). Respondent again admitted making the changes (T. p. 831). Also discussed at the meeting were reductions made in the reported values of a junkyard, town marinas, farm land, and property owned by friends of the respondent (T. p. 833). As a result of these discussions, petitioner Casazza concluded that respondent had acted improperly in reducing the values of those properties (T. p. 833).

The matter was discussed at meetings involving the petitioners, the First Selectman, the Board of Selectmen, Mr. Viogrande from the appraisal company, and the town attorney (T. pp. 3b–11b, 655–668, 1243, 1245–1247).[5] Two investigations were conducted with the knowledge and support of

---

[3] Connecticut law permits only corrections of clerical errors to be made after a grand list is signed. Substantive changes are not permitted (C.G.S. Sec. 12-60; *National CSS, Inc. v. Stamford*, 95 Conn. 587, 594, 489 A.2d 1034 (1985); *Empire Estates, Inc. v. Stamford*, 147 Conn. 262, 264, 159 A.2d 812 (1960); *Reconstruction Finance Corporation v. Naugatuck*, 136 Conn. 29, 32, 68 A.2d 161 (1949); *Bridgeport Brass Company v. Drew*, 102 Conn. 206, 210, 128 A.2d 413 (1925).

[4] The Town of Westbrook has a form of government consisting of selectmen, town meeting, and board of finance (Connecticut State Register and Manual, p. 548 (1982)).

[5] In its opinion, the Connecticut Supreme Court refers to the "Town Council." There is no town council in Westbrook (Connecticut Register and Manual, p. 548, 549 (1982)). There is a *town counsel* with whom both petitioners met (T. pp. 655–668).

the First Selectman after consultation with the town attorney (T. pp. 655-663, 1238, 1239, 1244-1248). The town attorney advised having the second investigation as a result of the fact that the questions raised by the First Selectman in regard to the properties reviewed in the first investigation by the Connecticut Assessor's Association (CAA) were not addressed (T. pp. 1244-1248). Local newspapers contacted all the parties as well as the First Selectman and reported on the controversy (T. pp. 377-393, 404-408, 623, 698-700). The second investigation was conducted by two employees of the State Office of Policy & Management. In their conclusion, they also did not address certain questions raised concerning undervaluations by the respondent (T. pp. 345-347). They concluded that Sections 12-60 and 12-62 of the Connecticut General Statutes were not violated, but that respondent's method of erasing entries on property record cards to effect value changes is commonly regarded as an unacceptable practice (T. pp. 134, 214, 215). As a result of its dissatisfaction with the investigations, the Board of Selectmen of Westbrook hired an independent appraiser to assess some of the properties which it felt were undervalued (T. pp. 728-730). The appraiser's testimony was disallowed by the trial court (T. p. 1482).

Several aspects of the Connecticut Supreme Court's opinion are significant. First, the court declined to pass on the administrative agency (OPM) employees' interpretation of Connecticut General Statutes Sections 12-60 and 12-62 which resulted in the agency's conclusion that the statutes had not been violated. The court, in effect, decided that, whether or not the agency employees' interpretation was correct, the conclusion of the agency, based on that interpretation, was evidence of falsity of the petitioners' allegations (A. pp. 10a-11a).[6]

The agency employees concluded that, although Nordquist stated she was not aware of all the changes made when

---

[6] The first investigation, conducted by three assessors from Connecticut Assessors Association, did not address the issue of the statutes at all (T. p. 661).

she signed the abstract, her oath and signature were sufficient to meet the requirements of Section 12-62 (T. pp. 282, 326, 327, 339). The agency also relied on the statement of the town's Tax Review Board chairman that the 27 changes made subsequent to the signing of the grand list were clerical changes made by the Board (T. p. 233). At trial, the chairman testified that some of those changes were not made by the Tax Review Board (T. p. 513).

The conclusion that Section 12-60 was not violated was based on the agency (OPM) employees' belief that all the changes made after the signing of the grand list were corrections of clerical errors (T. p. 233). Evidence at trial not only unequivocally demonstrated that the respondent changed values on these properties (T. pp. 68–70), but further that the OPM employee who testified for the respondent could not distinguish between clerical errors and substantive value changes (T. pp. 305–309). The witness from the appraisal company, also an assessor, testified to the distinction between clerical errors as opposed to changes in value:

> When there's a mistake in fact, either numbers, multiplication, division, size of lots, that is a factual mistake. There's no problem with that. You do correct that. As for opinion, what you do is, as the revaluation company, I make changes in opinion constantly but one is a demand that you change to adjust the facts. One of opinion is subjective. One is objective and one is subjective. . . .
>
> After the grand list is signed by the Board of Assessors or the assessor, he cannot make or they cannot make changes in opinion once that goes on there. And if there's a mistake in opinion, it has to go to the Board of Tax Review to review it. If not, the next step would be the courts. If there is a change due because of fact, wrong size of lots, or something like that, the assessor makes up a correction notice and he hands that into the Tax Collector making the change in the assessment (T. pp. 1417, 1418).

Petitioner Casazza stated that his refusal to retract his statements and his follow-up letter to OPM stemmed, in part, from his disagreement with the agency's interpretation of the statutes (T. pp. 861, 864). The Connecticut court's refusal to apply the standard of independent review to this evidence was based on its finding that the evidence pertained to falsity, not malice. The petitioners' reasonably-held beliefs with regard to their interpretation of the statutes was not considered.

In light of the Connecticut Supreme Court's assertion that it independently reviewed the record and concluded that the record supported the finding of the petitioners' actual malice (A. p. 12a), the following undisputed evidence not mentioned in the decision should be noted:

1. Respondent did make erasures and insert new figures on two to three hundred field sheets during the 1981 revaluation (T. pp. 54, 102a, 144a, 119, 327, 653, 654).

2. The petitioners were not involved in the changes of values on field sheets (T. pp. 56, 100a, 163, 327, 557, 560, 1434).

3. Respondent did not tell Nordquist of the changes before the grand list was signed (T. pp. 152-153, 184).

4. Respondent effected changes in values of 27 properties after the grand list was signed (T. pp. 68, 69).

5. Respondent had "no recollection" of telling either of the petitioners about the 27 changes to the grand list after it was signed (T. p. 189).

6. Respondent insisted that the assessed value of her husband's marina be reduced from $200,000.00 an acre to $100,000.00 an acre (T. pp. 1405-1406).

7. Respondent questioned and disputed values placed on certain properties by Mr. Viogrande of the appraisal company, including the marina owned by her husband. He conceded to

many of her valuations, including a reduction in the value of her husband's marina, because of the contractual requirement between his company and the town that the assessors' value controls. Neither of the petitioners acceded to these changes (T. pp. 1381-1385, 1395-1398, 1405-1406).

8. Mr. Viogrande refused to lower the value on the Woodstock Junkyard, and the Woodstock Junkyard was one of the properties for which a change was made by erasure after the 1981 grand list was signed (T. pp. 876, 1384).

9. Respondent unilaterally changed values on properties previously jointly reviewed by petitioners (T. pp. 1051-1054).

10. The chairman of the Board of Tax Review for Westbrook testified that there were changes made after the signing of the grand list that were not made by the Board of Tax Review (T. pp. 513, 525-527).

11. Subsequent to his refusal to sign the abstract on February 23, 1982, petitioner Casazza conducted his own independent review of approximately five thousand field cards for all properties in the Town of Westbrook (T. pp. 820, 823, 824). The results of Casazza's review are detailed in the appendix (A. pp. 51a-55a).

12. Respondent reduced or effected reductions in valuations of property in which her husband or family had a financial interest. Evidence produced at trial is set out in the appendix (A. pp. 51a-55a).

13. Erasing is an unacceptable assessing procedure during valuation. Evidence is set out in the appendix (A. p. 56a).

14. The Connecticut Assessors Association (CAA) investigation, initiated by the First Selectman, did not address the questions raised by the First Selectman and did not address the reduction in valuation of the marinas but only the per acre valuation of the marinas in relation to each other (T. pp. 657, 660, 661).

15. Respondent telephoned at least one of the CAA people involved in the investigation to explain her views to him (T. pp. 201, 202).

16. The conclusion of the CAA was disputed not only by petitioners but also by the First Selectman and by the town attorney (T. pp. 660–664, 1244–1248, 1256).

17. Petitioners met with Attorney John Larson, the town attorney, before any charges were brought to OPM, and the town attorney felt that the charges should be brought (T. pp. 1236, 1239–1242, 1244–1248, 1255, 1256).

18. Petitioners consulted with Mr. Viogrande, an assessor as well as an appraiser, prior to bringing any charges to OPM (T. pp. 1452, 1453).

19. Respondent wrote to the OPM investigator prior to the commencement of the investigation (T. pp. 288, 289; A. pp. 57a–58a). During the course of the investigation, the agency employee had a discussion with the First Selectman about how the report would affect Westbrook (T. pp. 278, 279).

20. The records of the 1971 decennial revaluation were not consulted during Casazza's review because there was a difference in valuation procedures between 1971 and 1981 (T. pp. 1158–1160). Casazza's testimony concerning this was supported by Mauro Bisaccia, the prior assessor for Westbrook, and Richard Viogrande, both men having had assisted in the 1971 Westbrook revaluation. These men testified that the technique for obtaining value were different in 1971 and 1981 (T. pp. 1338–1344, 1368–1374, 1385). There is not a shred of evidence to the contrary in the entire record.

The Court focused on ill will between the parties in concluding that there was clear and convincing evidence of actual malice (A. pp. 11a–15a).

With respect to Casazza, there is no evidence in the record that respondent's opinion concerning his reduction in January, 1982 led to any enduring animus. Evidence clearly established that the assessed value of Casazza's property was reduced by $2,300.00 on January 19, 1982 by independent action of the appraisal company (T. pp. 120a-125a, 818, 1387-1391, 1440-1441). Casazza did not learn of the reduction until January 19, 1982 (T. p. 123). The reduction was accomplished before Casazza had an opportunity to request it (T. pp. 120a-125a, 818, 1441, 1388, 1389). The witness from the appraisal company testified as to his reasons for the reduction on Casazza's property (T. pp. 1387-1389).[7] There was no evidence to support the court's conclusion that Casazza "remained away from the assessors office for approximately one month." The evidence was that around the end of January, he accompanied his wife to his daugher's house to stay with their grandson while his daughter was in California, and he did not return home until February 22, 1982 (T. p. 818). During that period of time, he stopped into the assessors' office at least once a week (T. pp. 131a, 132a). He testified that he did not review the books prior to February 23 because they were not in the assessors' possession when he was in the office. They were in the vault in the town clerk's office. In addition, they were not all available as some of them were still in the possession of the appraisal company (T. pp. 132a-136a).

In its opinion, the court stated that, from the evidence, the jury could reasonably have found ". . . After (petitioner Casazza's) return on February 23, 1982, he spent 'a good part of [the] time' investigating the office records with 'a view toward discovering any misconduct on the part of the plaintiff in her work as an assessor' " (A. p. 3a). There is absolutely no evidence in the entire record that Casazza's investigation was conducted "with a view toward discovering any misconduct on the part of the plaintiff in her work as an assessor." That phrase appears only in respondent's appellate brief (A. p. 59a).

---

[7] Respondent filed a complaint with OPM regarding this matter in May, 1982, and OPM unequivocally exonerated Casazza (T. pp. 290-300).

With respect to petitioner Nordquist, the undisputed evidence is that there was no animus between her and the respondent until after respondent chided her for her concern over the respondent's erasures and changes in value on properties pointed out by petitioner Casazza (T. pp. 571, 572, 579).

Finally, the court stated in its opinion: ". . . The defendants conceded at oral argument that there had been no evidence underlying their accusations that the plaintiff had increased assessments upon properties owned by persons who were in her disfavor." The court failed to note that petitioners consistently denied in their pleadings, at trial, and at oral argument that they had ever accused respondent of increasing assessments upon properties owned by persons in her disfavor (T. pp. 106b–109b, 596, 856). The only evidence produced by respondent in this regard was the testimony of the OPM investigator who, on direct examination by respondent's counsel, equivocated and was unable to refresh his recollection sufficiently to state the names of any individuals whom the petitioners allegedly claimed the respondent disfavored. The only name he came up with on his own was that of an individual whose property the respondent had reduced in value. Respondent's counsel supplied him with names of a few people whose values had been increased (T. pp. 242–244).

The Connecticut Supreme Court, citing *Bose Corporation v. Consumers Union of United States, Inc.*, 466 U.S. 485, 515 fn.31, 104 S.Ct. 1949, 8 L.Ed.2d 502, reh. denied, 467 U.S. 1267, 104 S.Ct. 3561, 82 L.Ed.2d 863 (1984), opined that "the *Bose* court clarified that '[t]he independent review function is not equivalent to a 'de novo' review of the ultimate judgment itself, in which a reviewing court makes an original appraisal of all the evidence to decide whether or not it believes that judgment should be entered for the plaintiff.' " The court did not set out its interpretation of that footnote, nor did it explain how the standard of its independent review of evidence of actual malice was affected.

REASONS FOR GRANTING THE WRIT

1. Since this Court's decision in *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 104 S.Ct. 1949, 8 L.Ed.2d 502, reh. denied, 467 U.S. 1267, 104 S.Ct. 3561, 82 L.Ed.2d 863 (1984), the law has been left in considerable confusion with regard to the precise scope of the independent review permitted an appellate court under the *New York Times v. Sullivan* standard. Although the *Bose* decision clearly states that "the rule of independent review assigns to judges a constitutional responsibility that cannot be delegated to the trier of fact, whether the fact finding function be performed in a particular case by a jury or by a trial judge," the application of the standard of independent review confronts the reviewing court with the difficult task of determining the extent to which it may reexamine and reject inferences which the jury may have utilized to support its finding of actual malice. In this case, there is no question that the respondent is a public figure and the undisputed facts relieve the appellate court of reaching the issue of the credibility of witnesses. This case presents an opportunity for clarification of the standard of independent review and its proper application in a defamation action in which the facts are readily discernible.

This Court's decision in *Bose* makes it clear that proof of actual malice and proof of falsity must occur in concert in order for certain forms of expression to be defamatory. What remains unclear is the extent to which the *Bose* decision absolves an appellate court of reviewing the trier's finding of fact with regard to the truth or falsity of the alleged utterances in a case such as this where the questions of falsity and actual malice are inextricably interwoven. The Connecticut Supreme Court so limited its view of the evidence as to ignore the undisputed evidence favorable to the petitioners concerning their state of mind and their reasonably held beliefs in the truth of their statements.

The Connecticut court's opinion demonstrates its failure to independently examine the facts so as to make an

independent constitutional judgment as required by *Bose v. Consumers Union, supra*, 466 U.S. 508, n.27. *Bose* compels an appellate court to review findings of fact " 'where a conclusion of law as to a federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon the federal question, to analyze the facts.' " *Id.* As footnote 27 flatly states:

> . . . The simple fact is that First Amendment questions of 'constitutional fact' compel this court's *de novo* review.

In declining to address the truth or falsity of the petitioners' accusations with regard to statutory violations, the Supreme Court of Connecticut failed to recognize that the questions of falsity and actual malice were clearly interrelated. Independent review of the question of actual malice necessitated a review of the interpretation of the Connecticut Statutes in issue. The court's refusal to review this evidence on the basis that it pertained to falsity, not malice, is a distinction without a difference in the context of this case. The court must look at " 'the statements which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect' " [citations omitted] *Bose*, 466 U.S. at 508. In so doing the court would be compelled to address the concepts of falsity and malice so intertwined in this circumstance that they cannot be separated. This court noted in *Bose* that a finding of fact in some cases is inseparable from the principles through which it was deduced. At some point, the reasoning by which a fact is "found" crosses the line between the application of those ordinary principles of logic and common experience which are ordinarily entrusted to the finder of fact into the realm of a legal rule upon which the reviewing court must exercise its own independent judgment. Where the line is drawn varies according to the nature of the substantive law at issue. Regarding certain largely factual questions in some areas of the law, the stakes — in terms of impact on future cases and future conduct — are too great to entrust them finally to the judgment of the trier of fact.

The Connecticut Supreme Court's deference to an administrative agent's interpretation of sections 12-60 and 12-62, which was critical to the question of actual malice, delegates to the jury a constitutional responsibility which this Court has consistently held must be retained by the court. The trial court refused to entertain evidence which demonstrated petitioners' interpretation of the statutes and insistence that respondent had violated them was reasonable. The Connecticut Supreme Court failed to review the extensive evidence pertinent to the petitioners' state of mind and thereby failed to independently evaluate the finding of actual malice.

Had the court properly reviewed the evidence of actual malice, it would have been compelled by the rule in *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 20 L.Ed. 2d 262 (1968) to find that the petitioners had reasonable subjectively held beliefs in the truth of their accusations clearly sufficient to demonstrate that their statements were not made in bad faith, but were substantially true and made without malice.

The Connecticut Supreme Court's review of the facts demonstrates a wholesale disregard of those facts which were noted in the petitioners' brief, appendix, and reply brief which bear directly on their state of mind and the absence of malice.

2. The "legitimate and substantial interest" of the citizenry in the conduct of its public officials, acknowledged by this court in *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S. Ct. 1975, L.Ed. 2d (1967), would be best served by a requirement that allegedly defamatory statements of public officers about the conduct of their fellow public officials be fully and independently reviewed by the court rather than left to the vagaries of the jury process. This court has repeatedly emphasized the sanctity of First Amendment rights, particularly with regard to public figures, and the need to encourage "debate on public issues [that is] uninhibited, robust and wide open." *New York Times v. Sullivan*, 376 U.S. 254, 84 S. Ct. 910 L.Ed. 2d (1964).

The instant case presents an opportunity for this court to prevent the significant "chilling effect" of judicial misapplication of the mandate of *Bose* upon public officials such as the petitioners. Confusion concerning the extent to which scrutiny of factual findings and inferences drawn therefrom come within the scope of independent review serves to obstruct the constitutional rights of such public officials.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

RESPECTFULLY SUBMITTED,

WILLIAM F. GALLAGHER
GALLAGHER & GALLAGHER
1377 Boulevard
P.O. Box 1925
New Haven, CT 06509
COUNSEL FOR PETITIONERS

No. _____

In The
Supreme Court Of The United States

OCTOBER TERM, 1987

TITUS J. CASAZZA,
Petitioner,

v.

JOAN O. HOLBROOK,
Respondent.

GALA H. NORDQUIST,
Petitioner,

v.

JOAN O. HOLBROOK,
Respondent.

APPENDIX

APPENDIX TABLE OF CONTENTS

JOAN O. HOLBROOK *v.* TITUS J. CASAZZA
(12863)

JOAN O. HOLBROOK *v.* GALA H. NORDQUIST
(12864)

PETERS, C. J., HEALEY, SHEA, CALLAHAN and MORAGHAN, Js.

The plaintiff, the former tax assessor for the town of Westbrook, sought damages, in two separate actions, for allegedly defamatory statements made by the defendants, two members of the Westbrook board of assessors. In making the statements the defendants had accused the plaintiff of numerous improprieties in the performance of her duties as assessor. After the plaintiff had been exonerated of any wrongdoing by an assessors organization and by the state agency charged with the supervision of municipal assessors, she demanded a retraction, but the defendants refused to comply. On the defendants' appeals from the judgments against them, *held:*

1. The defendants' claim to the contrary notwithstanding, the trial court did not err in denying their motions to set aside the verdicts; the evidence presented was sufficient to support the jury's findings of falsity and actual malice.
2. Because the charge concerning the definition of actual malice requested by the defendants was, in substance, given, they could not prevail on

their claim that the trial court failed to relate the legal element of malice to the particular facts of the case.

3. The defendants' claim that the court erred in not instructing the jury that evidence of the administrative determinations exonerating the plaintiff was incompetent to establish that the plaintiff had not violated the law was unavailing, the defendants having failed to file proper requests on that charge or otherwise to raise it distinctly at trial.
4. The trial court did not abuse its discretion in denying the defendants' motion for a mistrial which was made after the plaintiff asked the Westbrook first selectman whether he had agreed to pay the defendants' counsel fees; this court was not convinced by the defendants' assertions that that court's cautionary instruction to disregard the question was an inadequate cure and that the suggestion of indemnification was so harmful that a fair trial could not be had.
5. Because certain evidence which was claimed by the defendants to have been improperly excluded was, in fact, later admitted, any error resulting from the trial court's initial ruling was rendered harmless.
6. The trial court did not err in refusing to set aside the award of damages as excessive.

Standard of appellate review of successful defamation action, discussed.

Argued April 8—decision released July 7, 1987

Action, in each case, to recover damages for allegedly defamatory statements made by the defendants, brought to the Superior Court in the judicial district of Middlesex, where the cases were consolidated and tried to the jury before *Barry, J.;* verdicts and judgments for the plaintiff, from which the defendants filed separate appeals. *No error.*

William F. Gallagher, with whom were *Evelyn A. Barnum* and, on the brief, *Steven J. Errante* and *David J. Peska,* for the appellants (defendants).

Roger Sullivan, for the appellee (plaintiff).

SHEA, J. The principal issue in these appeals is whether the statements of the defendants accusing the plaintiff of numerous improprieties in performing her duties as tax assessor in the town of Westbrook were made with actual malice. The plaintiff brought separate defamation actions against the defendants, mem-

bers of the board of tax assessors for the town, seeking compensatory and exemplary damages for harm to her reputation, mental anguish, pain and suffering, public humiliation, and pecuniary loss alleged to have resulted from defamatory statements of the defendants. Following a trial in which the cases were consolidated, the jury returned verdicts against both defendants for an aggregate amount of $28,000 in general damages, $181,000 in special damages, and $77,477 in exemplary damages. While ordering remittiturs amounting to $3828 with respect to the awards of exemplary damages, the trial court denied the defendants' motions to set aside the verdicts against them, from which denials the defendants have appealed. We find no error.

From the evidence the jury could reasonably have found the following facts. In January, 1982, the defendant, Titus J. Casazza, obtained from an appraisal firm a reduction of $2300 in the appraised value of property belonging to him. Upon learning of this, the plaintiff, Joan O. Holbrook, then chairman of the board of assessors for the town, questioned Casazza about the use of his position as a member of the board of assessors in obtaining the reduction, and mentioned that Casazza's neighbors had not been accorded comparable treatment. Casazza responded angrily to a statement made by the plaintiff during that conversation "that it was quite unethical of him to use his office to further personal gain." Following this incident, Casazza remained away from the assessor's office for approximately one month. After his return on February 23, 1982, he spent "a good part of [the] time" investigating the office records with a view toward discovering any misconduct on the part of the plaintiff in her work as an assessor.

It was also on February 23, 1982, that an abstract compiling the 1981 decennial revaluations of real prop-

erty in Westbrook was completed. The plaintiff, the most experienced member of the board of assessors, had performed most of the revaluation work. Because the board was comprised of three persons, the plaintiff, the defendant Casazza, and the defendant Gala H. Nordquist, the signing of the abstract by the plaintiff and Nordquist, a majority of the board, validated it as the grand list for the town. Casazza, who refused to sign, subsequently persuaded Nordquist that she had endorsed a list that had been wrongfully altered by the plaintiff. Concerned about this criticism, Nordquist "stayed home for a day or two" until asked by the plaintiff to return. Upon returning, an argument occurred during which the plaintiff told Nordquist that she "had no business being an assessor." Nordquist became angry, was "reduced to tears," and immediately went to the office of Donald Morrison, first selectman for the town, and told him of Casazza's criticisms.

During a series of meetings in March, 1982, the defendants complained to Morrison, other selectmen, and the town council of misconduct on the part of the plaintiff. Among the accusations were allegations of improper field card erasures and unauthorized reductions in property values for relatives and friends. Morrison, with the consent of the parties, requested an investigation of the complaint by the Connecticut Association of Assessing Officers, which appointed a committee to conduct the investigation. After examining the records in the assessors' office and inspecting several of the relevant properties, the committee, on April 27, 1982, issued its report finding "no wrongdoing on the part of" the plaintiff.

On the following day the defendants submitted a further complaint to the office of policy and management (OPM), the state agency charged with the supervision of municipal assessors. See General Statutes § 12-1c. In summary, the defendants accused the plaintiff of:

(1) unilaterally changing assessed values in violation of General Statutes § 12-62;[1] (2) making unauthorized substantive changes in the 1981 grand list in violation of General Statutes § 12-60;[2] (3) illegally erasing several hundred property assessments; (4) reducing the assessments upon properties owned by friends and family members; and (5) increasing the assessments upon properties owned by people who were in her disfavor. With respect to several of their accusations, the defendants, before filing their complaint, did not seek an explanation from the plaintiff of the reasons for her actions. Additionally, with respect to their allegations of favoritism, the defendants did not "go back and consult the 1971 book to see what if any reductions were given in 1971." The defendants, furthermore, neither consulted an attorney nor sought the advice of any other assessors.

On June 22, 1982, the OPM released a committee report finding that all of the contested changes made by the plaintiff had been "appropriate," that no evidence existed of "partiality or bias," and therefore that the defendants' accusations were "invalid." At first selectman Morrison's request, however, the report included a comment that erasing, the method used by

[1] "General Statutes Sec. 12-62. PERIODIC REVALUATION OF REAL ESTATE. (a) Commencing October 1, 1978, the assessors of all towns, consolidated towns and cities and consolidated towns and boroughs shall, no later than ten years following the last preceding revaluation of all real property and every ten years after each such revaluation, view all of the real estate of their respective municipalities, and shall revalue the same for assessment and, in the performance of these duties, except in any municipality where there is a single assessor, at least two of the assessors shall act together, and all valuations shall be separately approved by a majority of the assessors. . . ."

[2] "General Statutes Sec. 12-260. CORRECTION OF CLERICAL ERROR IN ASSESSMENT. Any clerical omission or mistake in the assessment of taxes may be at any time corrected according to the fact by the assessors or board of tax review, and the tax shall be levied and collected according to such corrected assessment."

the plaintiff to correct field cards, while not illegal, was not the preferred method, which is "to draw a line through the value to be changed and enter the new value."

Casazza nevertheless filed another complaint with the supervisor of the OPM in which he repeated his previous accusations. The OPM declined to reopen its investigation. On September 22, 1982, the plaintiff mailed to the defendants a demand for retraction of their accusations, but the defendants refused to comply.

During the spring and summer of 1982, the news media provided extensive coverage of the controversy between the parties. The media detailed the charges of misconduct underlying the investigations of the plaintiff, and numerous articles featured quotations from Casazza. The impact of the defendants' accusations upon the plaintiff's reputation resulted in the plaintiff being dropped from consideration for the newly created position of single assessor for the town. Additionally, after having applied for assessor positions in fifty-two towns within a one hundred mile radius of Westbrook, at least three of which were actively seeking an assessor, the plaintiff received only one interview, which did not result in a job offer. The plaintiff, furthermore, felt compelled to move from Westbrook to an adjoining community.

The plaintiff brought the present actions in November, 1982. In these appeals from the judgments rendered by the trial court in accordance with verdicts for the plaintiff, the defendants claim: (1) that the evidence was insufficient to support findings of falsity and malice; (2) that the trial court erred in various aspects of its jury charge; (3) that the allusion by the plaintiff's counsel during trial to an indemnification of the defendants by the town warranted a mistrial; (4) that the court

erred in excluding evidence of the sale price of property owned by the plaintiff's husband; and (5) that the damage awards are excessive.

I

The rule set forth by the United States Supreme Court in *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 279-80, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), prohibits a public official from recovering damages for a defamatory falsehood unless he proves that the false "statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." See also *St. Amant* v. *Thompson*, 390 U.S. 727, 730-31, 88 S. Ct. 1323, 20 L. Ed. 2d 262 (1968). Further, those who "are properly classed as public figures and those who hold governmental office may recover for injury to reputation only on clear and convincing proof that the defamatory falsehood was made with" such actual malice. *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 342, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974). In this appeal the plaintiff concedes that, as a tax assessor, she "had substantial responsibility for the conduct of her office in establishing property values and therefore was a public official according to standards set by federal law." Cf. *New York Times Co.* v. *Sullivan*, supra (elected commissioner as public official); *Moriarty* v. *Lippe*, 162 Conn. 371, 294 A.2d 326 (1972) (patrolman); *Ryan* v. *Dionne*, 28 Conn. Sup. 35, 248 A.2d 583 (1968) (tax collector).

The jury affirmatively answered special interrogatories submitted by the court, expressly finding that (1) the defendants uttered and published defamatory statements about the plaintiff, and that, by clear and convincing evidence, such statements (2) were false and (3) were made with actual malice. The defendants first claim that the trial court erred in denying their motions

to set aside the verdict and render judgment notwithstanding the verdict because the verdict is not supported by the evidence.

A

We must preliminarily determine the proper standard of appellate review. Appellate courts ordinarily do not disturb the facts as found by a jury unless it appears that the evidence furnished no reasonable basis for the jury's conclusions. *Moriarty* v. *Lippe*, supra, 374; *Petrizzo* v. *Commercial Contractors Corporation*, 152 Conn. 491, 499, 208 A.2d 748 (1965). The evidence is given the most favorable construction to which it is reasonably entitled in support of the verdict. *Wochek* v. *Foley*, 193 Conn. 582, 587, 477 A.2d 1015 (1984); *Petrillo* v. *Bess*, 149 Conn. 166, 167, 179 A.2d 600 (1961); *Kerrigan* v. *Detroit Steel Corporation*, 146 Conn. 658, 660, 154 A.2d 517 (1959).

Where a defamation action has successfully been brought by a public official, however, the issues involve the demarcation between speech that is unconditionally guaranteed and speech that may legitimately be regulated. Cf. *Speiser* v. *Randall*, 357 U.S. 513, 525, 78 S. Ct. 1332, 2 L. Ed. 2d 1460 (1958). "In cases where that line must be drawn, the rule is that we 'examine for ourselves the statements in issue and the circumstances under which they were made to see . . . whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect.' *Pennekamp* v. *Florida*, 328 U.S. 331, 335 [66 S. Ct. 1029, 90 L. Ed. 1295 (1946)] . . . . We must 'make an independent examination of the whole record,' *Edwards* v. *South Carolina*, 372 U.S. 229, 235 [83 S. Ct. 680, 9 L. Ed. 2d 697 (1963)], so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of free expression." *New York*

Times Co. v. *Sullivan*, supra, 285; cf. *New York* v. *Ferber*, 458 U.S. 747, 774 n.28, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982); *Hess* v. *Indiana*, 414 U.S. 105, 108–109, 94 S. Ct. 326, 38 L. Ed. 2d 303 (1973); *Miller* v. *California*, 413 U.S. 15, 25, 93 S. Ct. 2607, 37 L. Ed. 2d 419, reh. denied, 414 U.S. 881, 94 S. Ct. 26, 38 L. Ed. 2d 128 (1973); *Street* v. *New York*, 394 U.S. 576, 592, 89 S. Ct. 1354, 22 L. Ed. 2d 572 (1969).

In *Bose Corporation* v. *Consumers Union of United States, Inc.*, 466 U.S. 485, 104 S. Ct. 1949, 80 L. Ed. 2d 502, reh. denied, 467 U.S. 1267, 104 S. Ct. 3561, 82 L. Ed. 2d 863 (1984), the United States Supreme Court elaborated upon the "constitutionally based rule" of independent review. The court maintained that the rule preserves the "due regard" that is ordinarily given to the trial judge's opportunity to observe the demeanor of the witnesses. Id., 499–500. In a footnote, the *Bose* court clarified that "[t]he independent review function is not equivalent to a '*de novo*' review of the ultimate judgment itself, in which a reviewing court makes an original appraisal of all the evidence to decide whether or not it believes that judgment should be entered for plaintiff." Id., 514 n.31. The court noted that, apart from the finding of actual malice, to which the rule of independent review applies, the other findings of fact in a defamation case are properly tested under the clearly erroneous standard of review. Id.; see also *Time, Inc.* v. *Pape*, 401 U.S. 279, 284, 91 S. Ct. 633, 28 L. Ed. 2d 45, reh. denied, 401 U.S. 1015, 91 S. Ct. 1248, 28 L. Ed. 2d 552 (1971); cf. *Tavoulareas* v. *Piro*, 817 F.2d 762 (D.C. Cir. 1987). As we have stated, it is the finding of actual malice by clear and convincing proof that impels a defamatory falsehood uttered against a public official across the constitutional threshold and into the limited category of "unprotected" speech.

B

We initially dispose of the defendants' claim that the evidence was insufficient to support the findings by the jury in their respective cases that the defamatory statements were false. We note that in these appeals the defendants challenge such findings only in respect to their statements that the plaintiff improperly changed assessments in the 1981 grand list in violation of General Statutes §§ 12-62 and 12-60. Moreover, the defendants conceded at oral argument that there had been no evidence underlying their accusations that the plaintiff had increased assessments upon properties owned by persons who were in her disfavor.

The jury returned a general verdict for the plaintiff while answering affirmatively the special interrogatory whether "the plaintiff proved by clear and convincing evidence the falsity of *any* of the defamatory statements." (Emphasis added.) This court has recognized that a general verdict for one party raises a presumption that the jury found every issue in favor of " 'the prevailing party.' " *Alfano* v. *Insurance Center of Torrington,* 203 Conn. 607, 613, A.2d (1987); *Finley* v. *Aetna Life & Casualty Co.,* 202 Conn. 190, 202, 520 A.2d 208 (1987); *Colucci* v. *Pinette,* 185 Conn. 483, 489–90, 441 A.2d 575 (1981). Thus, we must uphold the jury's findings of falsity if the evidence is sufficient in respect to any of the defamatory statements made by the defendants. Applying the ordinary standard of appellate review, we conclude that testimony regarding the April 27, 1982 determination of the Association of Assessing Officers and the June 22, 1982 OPM committee report, both of which declared the defamatory accusations untrue, furnished a reasonable basis for the jury's findings of falsity. The general verdict rule makes it unnecessary for us to undertake a sepa-

rate analysis concerning the defendants' particular accusations that the plaintiff violated §§ 12-62 and 12-60.[3]

We next "independently review" the record to determine whether sufficient evidence supports the jury's findings of actual malice. A statement made with actual malice, under the rule of *New York Times Co.*, is made with knowledge of its falsity or with reckless disregard of whether it is false. See *Beckley Newspapers Corporation* v. *Hanks*, 389 U.S. 81, 82–83, 88 S. Ct. 197, 19 L. Ed. 2d 248 (1967). A merely negligent misstatement of fact about a public official retains the constitutional protection afforded free expression. See *Rosenbloom* v. *Metromedia*, 403 U.S. 29, 50, 91 S. Ct. 1811, 29 L. Ed. 2d 296 (1971); *Rosenblatt* v. *Baer*, 383 U.S. 75, 83–84, 86 S. Ct. 669, 15 L. Ed. 2d 597 (1966). Further, proof that a defamatory falsehood has been uttered

[3] In these appeals the defendants, in their joint brief, have inserted a claim that the trial court erred in refusing to submit to the jury a series of interrogatories that had been proposed by the defendant Casazza. See Practice Book § 312. It is within the reasonable discretion of the trial court whether to submit pertinent interrogatories to the jury. *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Cole*, 189 Conn. 518, 527, 457 A.2d 656 (1983); *Freedman* v. *New York, N.H. & H. R. Co.*, 81 Conn. 601, 612, 71 A. 901 (1909). We have recognized, however, that a party has the right to avoid the implication of a general verdict by seeking from the jury answers to appropriate interrogatories. *Ubysz* v. *DiPietro*, 185 Conn. 47, 61–62, 440 A.2d 830 (1981); *Callahan* v. *Jursek*, 100 Conn. 490, 493, 124 A. 31 (1924). The interrogatories proposed by the defendant Casazza would not have involved consideration of each of the accusations that had been made by the defendants. Most notably, no interrogatory sought a jury finding with respect to the accusation that the plaintiff had been responsible for several hundred illegal erasures on the field card records. Therefore, even if the jury's answers to all of the proposed interrogatories had favored the defendants, such results would not necessarily have been in contradiction to a verdict for the plaintiff. Moreover, the failure on the part of Casazza to take exception to the court's refusal, or to the three special interrogatories prepared and submitted to the jury by the court, indicates Casazza's satisfaction at the time that the three interrogatories were adequate to protect his interests. Thus, we conclude that the trial court did not abuse its discretion in refusing to submit the proposed interrogatories to the jury.

"with bad or corrupt motive" or with an intent to inflict harm will not be sufficient to support a finding of actual malice; *Beckley Newspapers Corporation* v. *Hanks*, supra; *Henry* v. *Collins*, 380 U.S. 356, 357, 85 S. Ct. 992, 13 L. Ed. 2d 892 (1965); although such evidence may assist in drawing an inference of knowledge or reckless disregard of falsity. 3 Restatement (Second), Torts § 580A, comment d.

Applying these principles, we are persuaded that the proof presented to show actual malice does possess the convincing clarity that the constitutional standard demands. With respect to Nordquist, the record indicates that, in making several accusations, she relied entirely upon Casazza's advice to her and made no effort independently to verify facts. The following transcript portion, for example, records the examination of Nordquist by counsel for the plaintiff regarding the letter of complaint submitted to the OPM following the April 27, 1982 exoneration of the plaintiff by the Association of Assessing Officers:

"Q. And in that letter, you accused Joan Holbrook of violating two Statutes having to do with assessing?

"A. Yes.

"Q. Statute 12-62 and Statute 12-60, is that correct?

"A. Yes.

"Q. Had you ever read either one of those statutes before you signed that letter?

"A. The first one where it says the changes were made unilaterally, I didn't read the Statute, because I figured this was what it was all about.

"Q. Isn't it true that you never read either one of those Statutes before you made those charges?

"A. Yes sir.

"Q. And isn't it also true that you have never read those Statutes?

"A. Yes.

"Q. Not since the charges were made, you've never resorted to the Statutes?

"A. No.

"Q. And before you sent that charge against Joan Holbrook to O.P.M., you didn't consult a lawyer, did you, and ask his advice about the meaning of the Statutes?

"A. No.

"Q. And you didn't consult any other assessor?

"A. No.

"Q. The only person you consulted with was Titus Casazza?

"A. There were other people that were involved.

"Q. The only person you consulted with in making the charges was Titus Casazza, isn't that true?

"A. Yes sir."

The jury could properly have concluded that a reasonably prudent person in the position of Nordquist, upon learning of the initial exoneration of the plaintiff, would have sought evidence corroborative of Casazza's perspective prior to publishing the subsequent accusations of misconduct in the complaint to the OPM. Viewed in the light of the following additional factors, Nordquist's disregard of the probable falsity of her accusations crosses the threshold from negligence to recklessness. First, the circumstances under which Nordquist embarked upon publishing her claims of wrongdoing suggest the presence of animus. Upon being told by the plaintiff that she "had no business

being an assessor," Nordquist, angered and "reduced to tears," immediately published her accusations to Morrison, the town's first selectman. Second, Nordquist refused to retract her statements after learning of a second official exoneration of the plaintiff, this time by the OPM.[4] A refusal to retract a statement that has been demonstrated to be false and defamatory "might be relevant in showing recklessness at the time the statement was published." 3 Restatement (Second), Torts § 580A, comment d; *Golden Bear Distributing Systems of Texas, Inc.* v. *Chase Revel, Inc.*, 708 F.2d 944, 950 (5th Cir. 1983). We conclude that the failure of Nordquist to investigate the facts, seek advice from other knowledgeable persons, or publish a retraction after learning of the June 22, 1982 OPM committee report, together with the ill will that seemingly spurred the initial publication of her defamatory statements, evidenced "the high degree of awareness of their probable falsity demanded by *New York Times* . . . ." *Garrison* v. *Louisiana*, 379 U.S. 64, 74, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964).

The record similarly supports the finding of actual malice with respect to Casazza. Ill will clearly developed when the plaintiff challenged Casazza about the propriety of using his official position as an assessor in obtaining a reduction in the value of his own property. Like Nordquist, Casazza did not check the avail-

[4] The transcript indicates that the examination of Nordquist soon turned to the subject of the plaintiff's demand for retraction:

"Q. Now, after spending a month or a month and a half on their investigation, the [OPM] issued a report in which they exonerated Mrs. Holbrook of the charges that you had made, isn't that true?

"A. Yes.

"Q. And did you thereafter receive a letter from Mrs. Holbrook's attorney . . . in which he called upon you to make a public retraction of the charges that you had published against Mrs. Holbrook?

"A. Yes, I did. . . .

"Q. And you refused to retract your accusation, isn't that also true?

"A. Yes."

able records of the 1971 decennial revaluation, consult an attorney, or seek the advice of other assessors about the validity of his accusations. Following the June 22, 1982 OPM committee report determining that the accusations against the plaintiff were invalid, Casazza not only refused to publish a retraction, but republished his statements in a further complaint filed with the supervisor of the OPM, and also at an interview with a reporter for the Middletown Press, which resulted in an article that elaborated upon the claimed misconduct of the plaintiff. Such evidence supports the conclusion that Casazza recklessly disregarded the probable falsity of his publications. See *Rosenbloom* v. *Metromedia,* supra, 56; *St. Amant* v. *Thompson,* supra, 731.

Because we determine that the evidence was sufficient to support the jury's findings of falsity and malice, we hold that the trial court did not err in denying the defendants' motions to set aside the verdict and render judgment notwithstanding the verdict.

II

The defendants next claim that the trial court erred in its charge to the jury because the instructions (1) failed adequately to relate the legal element of malice to the particular facts of this case, and (2) did not ask the jury independently to determine whether the plaintiff had made illegal unilateral or substantive changes in the grand list. We disagree.

A

The court devoted a substantial portion of its jury instructions to the issue of malice. The following excerpts are illustrative. "To recover even for a false, defamatory statement, a public official such as the plaintiff must establish that the statement was made with actual malice; that is, with knowledge that the statement was false or with a reckless disregard for

its truth or falsity . . . . You are by now familiar with the facts in this case. Mrs. Holbrook has several claims she has sought to prove. That the defendants have uttered and published a variety of statements as are outlined in the pleadings that I have referred you to read and to the testimony that you have heard. Let me state these issues again. To establish her claims against a defendant, Mrs. Holbrook must prove three essential elements. . . . Third, that a defendant published an actionable and false, defamatory statement with actual malice; that is, knowing it was false or seriously doubting its truth. And that element requires proof again by the plaintiff by clear and convincing evidence. . . . Actual malice is a legal term which you must not confuse with more common definitions of malice; such as, ill will or hatred. The plaintiff cannot prevail merely by proving that the defendant was motivated by ill will, prejudice, hostility, hatred, contempt or even a desire to injure."

Upon receiving a request from the jury for an explanation of the term "malice" "as applied to this case in writing as clearly as possible in lay terms," the court responded: "In this case for a defendant, for the defendant to have acted with malice means that he must've uttered and published a defamatory statement with knowledge that the statement was false or with a reckless disregard of any evidence or circumstances of its probable falsity." The record indicates that the jury foreman appeared satisfied with this definition, to which the defendants took an exception only on the ground that the court had not restated the burden of proof.

We have stated that the test of a court's charge "is not whether it is as accurate upon legal principles as the opinions of a court of last resort but whether it fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules

of law." *Atlantic Richfield Co.* v. *Canaan Oil Co.*, 202 Conn. 234, 240, 520 A.2d 1008 (1987); *Borsoi* v. *Sparico*, 141 Conn. 366, 371, 106 A.2d 170 (1954). Because the charge was correct in law and ample for the guidance of the jury, it met the required test. See *State* v. *Marra*, 195 Conn. 421, 443, 489 A.2d 350 (1985); *DeCarufel* v. *Colonial Trust Co.*, 143 Conn. 18, 20–21, 118 A.2d 798 (1955).

We note that the charge requested by the defendants in respect to malice was no more fact-specific than the charge actually given on that issue, to which the defendants took no exception. The defendants requested the following language: "Even if you have found on the basis of the evidence that the plaintiff has proven by clear and convincing evidence, that is, to a high probability, that the statements made about her were false, she is not entitled to prevail in this action unless you also find that the plaintiff has proven to you by clear and convincing evidence that at the time the defendant made any or each such false statement, he either knew that the statement was not true, or made the statement with reckless disregard for whether it was true or not . . . . By reckless disregard for the truth or falsity of a defamatory statement, I mean that in order to find for the plaintiff on this basis, you must be convinced that when the defendant made the statements in question, he possessed a high degree of awareness of their probable falsity." Because the charge requested was in substance given, the defendants cannot prevail in their attack upon the generality of the language used therein. *Atlantic Richfield Co.* v. *Canaan Oil Co.*, supra, 241; *Lowell* v. *Daly*, 148 Conn. 266, 269, 169 A.2d 888 (1961).

B

We are similarly unpersuaded by the defendants' claim that the court erred in failing to instruct the jury

that evidence of the administrative determinations exonerating the plaintiff "was incompetent to establish that the plaintiff had not violated [General Statutes §§ 12-62 and 12-60]." The defendants took no exception to this omission from the charge, but rely upon the failure of the court to charge in accordance with their request. We note that the defendants have not claimed error in the admission of testimony regarding those administrative rulings.

Section six of the defendants' requests to charge consisted of four paragraphs dealing with the defendants' accusations that the plaintiff had made changes in the grand list that were unilateral, in violation of § 12-62, and that were substantive, in violation of § 12-60. The request stated, in respect to each alleged statutory violation, that, if the plaintiff has not proved falsity by clear and convincing evidence, "you must return a verdict for the defendant."

Ordinarily there can be no error in a court's rejection of a request to charge that clearly does not meet the requirements of Practice Book § 318. See *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Cole,* 189 Conn. 518, 527 n.2, 457 A.2d 656 (1983). That rule, which is entitled "Form and Contents of Requests," provides in part that requests to charge the jury "shall be in separate and numbered paragraphs, each containing a single proposition of law clearly and concisely stated with the citation of authority upon which it is based . . . ." Practice Book § 318; see generally *Colucci* v. *Pinette,* 185 Conn. 483, 486–87 n.2, 441 A.2d 574 (1981). This request does not meet these criteria. We have stated that a request containing more than one principle of law violates the rule and was properly refused. See, e.g., *Terminal Taxi Co.* v. *Flynn,* 156 Conn. 313, 320, 240 A.2d 881 (1968); W. Maltbie, Connecticut Appellate Procedure §§ 109, 110.

Additionally, the request to charge included the instruction that, unless the plaintiff has proved the falsity of either alleged statutory violation, "you must return a verdict for the defendant." A verdict for the plaintiff would have been proper, however, had she prevailed in respect to any one of the several claimed defamatory accusations. Because the request was therefore an inaccurate statement of the applicable law, the court was not in error in denying the request to charge. See *State* v. *Chetcuti,* 173 Conn. 165, 171, 377 A.2d 263 (1977); *State* v. *Green,* 172 Conn. 22, 25, 372 A.2d 133 (1976).

In any event, we note that, while the defendants claim error in the court's failure to instruct the jury that evidence of the administrative determinations "was incompetent to establish that the plaintiff had not violated [§§ 12-62 and 12-60]," their request did not include such an instruction. Because the defendants took no exception on the point, this claim was "not distinctly raised at trial"; *State* v. *Rogers,* 199 Conn. 453, 461, 508 A.2d 11 (1986); and we are relieved of any obligation to consider it further. Practice Book § 4185; *Atlantic Richfield Co.* v. *Canaan Oil Co.,* supra, 241; *Kosko* v. *Kohler,* 176 Conn. 383, 389, 407 A.2d 1009 (1978).

III

A further contention of the defendants is that the trial court erred in refusing to declare a mistrial when the plaintiff's counsel asked Morrison, first selectman of the town, whether he had agreed to pay the defendants' counsel fees. The defendants' objection at trial, renewed on appeal, was that the question "has the effect of leading the jury to believe that [the defendants] are protected by the Town, that their Attorneys' fees are being paid by the Town, and the inference that's going to be drawn by the jury is that the Town

will in effect pay any judgments in this case . . . ." Counsel for the plaintiff responded that the purpose of his question was "to show that the witness is not a neutral and detached person with whom I cannot ask leading questions, but that he is in fact a hostile witness and that his interests are aligned with [the defendants]." While denying the motion for mistrial, the court sustained the objection, and then instructed the jury to disregard the question.

The defendants argue that "[t]he inference that defendants would be indemnified by the Town may be likened to placing information regarding a defendant's insurance coverage before a jury." We have stated that the rule excluding evidence that a defendant carries liability insurance is not without exception. See *Magnon* v. *Glickman*, 185 Conn. 234, 242, 440 A.2d 909 (1981); *Gigliotti* v. *United Illuminating Co.*, 151 Conn. 114, 122, 193 A.2d 718 (1963). " 'It is usually held that it is permissible for plaintiff's counsel, when acting in good faith, to show the relationship between a witness and defendant's insurance company where such evidence tends to show the interest or bias of the witness and affects the weight to be accorded his testimony.' " *Magnon* v. *Glickman*, supra; annot., 4 A.L.R.2d 761, 779.

The trial court has great latitude in ruling on motions for mistrial. *State* v. *Nowakowski*, 188 Conn. 620, 624, 452 A.2d 938 (1982); *State* v. *Perez*, 181 Conn. 299, 310, 435 A.2d 334 (1980). The question before us on appeal is not primarily whether the question posed to Morrison was proper, but whether the trial court, in refusing to grant a mistrial on account of an unanswered question that the jury was instructed to disregard, so far exceeded or abused the discretion committed to it as to warrant our granting a new trial. *State* v. *Couture*, 194 Conn. 530, 562, 482 A.2d 300 (1984), cert. denied, 469 U.S. 1192, 105 S. Ct. 967, 83 L. Ed. 2d

971 (1985); *State* v. *Laudano,* 74 Conn. 638, 646, 51 A. 860 (1902). The general rule is that a mistrial is granted only where it is apparent to the court that, as a result of some occurrence during trial, a party has been deprived of the opportunity for a fair trial. *State* v. *Gaston,* 198 Conn. 490, 495, 503 A.2d 1157 (1986); *State* v. *DeMatteo,* 186 Conn. 696, 703, 443 A.2d 915 (1982).

Even assuming that the question posed to Morrison was improper, we are not convinced by the defendants' bare assertions that "the court's cautionary instruction was an inadequate cure," and that "the suggestion of indemnification [was] so harmful that a fair trial could not be had." Accordingly, we hold that the court did not abuse its discretion in denying the defendants' motion for a mistrial.

IV

The defendants next claim that the court erred in excluding evidence regarding the sale price of property owned by the plaintiff's husband. The defendants argue that the knowledge they possessed about the sale of the "Patchoug Marina," which occurred some time after the assessment date at a price "substantially higher than the assessed value placed on it by the plaintiff in the 1981 revaluation," was crucial on the issue of actual malice.

It is true that the trial court sustained the plaintiff's objection to "any inquiry of this witness [viz., the defendant Casazza] about the sale and the sales price [as] irrelevant to the issues at hand . . . . " It is clear, however, that the defendants sought to introduce such evidence on the issue of falsity, and not on the issue of malice. The plaintiff's counsel argued at trial that the evidence was inadmissible to show lack of malice on the part of Casazza because he "did not have this information in his possession at the time that he made

the accusations." Counsel for Casazza subsequently stated to the court that the evidence of the sale price of the marina "really goes to the truth of the matter," and that "it should be admissible because the fact that something is true, even if that doesn't come to light until after the statement is made, is still very pertinent." We agree with the defendants' claim at trial that evidence of the sale was relevant to the issue of whether there had been an underassessment of the property by the plaintiff, as the defendants had charged. We agree with the plaintiff, however, that, in the absence of a showing that the defendants were aware of this sale when they made their remarks concerning the plaintiff's exercise of favoritism, the evidence was irrelevant for the purpose of proving the lack of malice.

The defendants have abandoned on appeal the valid ground for the admissibility of the proffered evidence relied upon at trial probably because they recognize that ultimately they suffered no harm from the erroneous ruling. The record indicates that evidence of the sale price was indeed introduced by the defendants during the direct examination of Anthony Viagrande, an officer of the appraisal firm that had assisted in the 1981 revaluation. Viagrande testified several times that the plaintiff had informed him that her husband had sold the marina for $1,200,000. Because the evidence claimed to have been improperly excluded was in fact later admitted, any error resulting from the court's initial ruling was rendered harmless. See *Allen* v. *Nissley,* 184 Conn. 539, 545–46, 440 A.2d 231 (1981).

V

The defendants' final claim is that the court erred in refusing to set aside the damage awards as excessive. The defendants submit that these excessive awards resulted from the court's failure adequately to instruct the jury on the standard of proof to be borne

by the plaintiff with respect to the elements of falsity and actual malice. We are not persuaded that the awards were excessive.

We find no deficiency in the charge given to the jury by the trial court in regard to the plaintiff's burden of proof. The court instructed that the plaintiff "has a more demanding and different burden of proof than preponderance of the evidence on two elements of her claim. She must demonstrate one, that any defamatory statement was false, and two, a defendant acted with actual malice, and both of those claims must be proved by what we call clear and convincing evidence. Clear and convincing evidence is a more exacting standard than proof by a preponderance of the evidence. Clear and convincing proof leaves no substantial doubt in your mind. It is proof that establishes in your mind not only that the proposition at issue is probable, but also that it is highly probable. . . . On the other hand, clear and convincing evidence is not as high a standard as the burden of proof applied in criminal cases, which is proof beyond a reasonable doubt. It is enough that the plaintiff in this case establishes falsity or actual malice beyond any substantial doubt. She does not have to dispel every reasonable doubt. . . .

"To establish her claims against a defendant, Mrs. Holbrook must prove three essential elements. First, that the challenged statements are defamatory of her in some actionable way and were uttered and published by a defendant. That issue must be proved by her by a preponderance of the evidence. Second, that any actionable, defamatory statement is false in some material respect. That burden is by clear and convincing evidence. Third, that a defendant published an actionable and false, defamatory statement with actual malice; that is, knowing it was false or seriously doubting its truth. And that element requires proof again by the plaintiff by clear and convincing evidence."

These jury instructions conformed to the defendants' requests to charge, are sufficiently correct in law;[5] see *Gertz* v. *Robert Welch, Inc.*, supra, 342; *Rosenbloom* v. *Metromedia*, supra, 30; *Dacey* v. *Connecticut Bar Assn.*, 170 Conn. 520, 534–38, 368 A.2d 125 (1976); and furnished adequate guidance for the jury. See generally *Atlantic Richfield Co.* v. *Canaan Oil Co.*, supra, 240. Therefore, we cannot agree with the defendants that such instructions misled the jury into awarding excessive damages.

We next examine the damage awards returned by the jury. The jury returned a verdict against Casazza for $21,000 in general damages, $135,750 in special damages, and $58,111 in exemplary damages. Against the defendant Nordquist the jury returned a verdict for $7000 in general damages, $45,250 in special damages, and $19,366 in exemplary damages. The court ordered remittiturs on the exemplary damages awards in the amounts of $2874 and $954 in regard to Casazza and Nordquist, respectively. Thus, the defendant Casazza was responsible for 75 percent, and the defendant Nordquist for 25 percent, of the aggregate damages awarded to the plaintiff.

"Assessment of damages is peculiarly within the province of the jury and their determination should be

[5] We note that the propriety of that portion of the jury charge placing the burden of proving falsity upon the plaintiff by clear and convincing evidence is not at issue in this appeal. "At common law, prior to the application of constitutional standards in the area of libel and slander, the truth of the defamatory statement was an affirmative defense for the defendant to prove. Restatement of Torts §§ 518, 613 (2) (1938). Although falsity was an element of a cause of action for defamation, id. at § 558, once a statement was shown to be defamatory, falsity was presumed. Prosser, Torts § 116 (4th Ed. 1971). . . . The language of *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), and later cases makes clear that the burden of demonstrating the falsity of the defamatory statement rests on the plaintiff when the malice standard applies." *Wilson* v. *Scripps-Howard Broadcasting Co.*, 642 F.2d 371, 374–75 (6th Cir. 1981).

set aside only when the verdict is plainly excessive and exorbitant." *Wochek* v. *Foley,* 193 Conn. 582, 586, 477 A.2d 1015 (1984); *Szivos* v. *Leonard,* 113 Conn. 522, 525, 155 A. 637 (1931). "The only practical test to apply to a verdict is whether the award of damages falls somewhere within the necessarily uncertain limits of fair and reasonable compensation in the particular case, or whether the verdict so shocks the sense of justice as to compel the conclusion that the jury were influenced by partiality, prejudice, mistake or corruption. *Briggs* v. *Becker,* 101 Conn. 62, 66, 124 A. 826 [1924]." *Slabinski* v. *Dix,* 138 Conn. 625, 629, 88 A.2d 115 (1952). Evidence offered at trial relevant to damages must be reviewed in the light most favorable to sustaining the verdict. See *Wochek* v. *Foley,* supra, 587; *Gorczyca* v. *New York, N.H. & H. R. Co.,* 141 Conn. 701, 703–704, 109 A.2d 589 (1954).

The exemplary damages awards in the present cases were properly limited to attorneys' fees, which were based on a one third contingency fee agreement and costs. See *Kenny* v. *Civil Service Commission,* 197 Conn. 270, 277, 496 A.2d 956 (1985); *Alaimo* v. *Royer,* supra, 42; see also *Gertz* v. *Robert Welch, Inc.,* supra, 348–50. Apart from these awards, the plaintiff received a verdict for an aggregate amount of $28,000 in general damages and $181,000 in special damages. There was testimony at trial from Gary Crakes, an economist, that the plaintiff had sustained a "total net discounted loss" of $181,571. The plaintiff sought damages based not only upon pecuniary loss, but also public humiliation, mental anguish, and pain and suffering. An award of such general damages cannot have been the product of precise calculations and is given considerable deference by a reviewing court. See *Campbell* v. *Gould,* 194 Conn. 35, 42, 478 A.2d 596 (1984).

It is clear that, under these circumstances, the awards of damages fall "somewhere within the neces-

sarily uncertain limits of fair and reasonable compensation," and may be seen as reasonably related to the evidence adduced at trial. "The trial court's refusal to set aside the verdict is entitled to great weight and every reasonable presumption should be given in favor of its correctness." *Katsetos* v. *Nolan*, 170 Conn. 637, 656, 368 A.2d 172 (1976); see *Herb* v. *Kerr*, 190 Conn. 136, 139, 459 A.2d 521 (1983). Accordingly, we find no error in the refusal of the trial court to set aside the damage awards as excessive.

There is no error.

In this opinion the other justices concurred.

NO. 12863/12864

JOAN O. HOLBROOK : SUPREME COURT
VS
TITUS J. CASAZZA
: STATE OF CONNECTICUT
JOAN O. HOLBROOK
VS
GALA H. NORDQUIST : JULY 28, 1987

ORDER

THE MOTION OF THE DEFENDANTS TITUS J. CASAZZA AND GALA H. NORDQUIST FILED JULY 17, 1987, FOR REARGUMENT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY O R D E R E D DENIED.

BY THE COURT,

/s/ Carolyn Cunha Ziogas
Assistant Clerk — Appellate

NOTICE SENT: 7/28/87
GALLAGHER & GALLAGHER
LYNCH, TRAUB, KEEFE & SNOW
PESKA, SIPPLES & MUNRO
SULLIVAN & DONEGAN
HON. DAVID M. BARRY
CLERK, SUPERIOR COURT, MIDDLESEX
38546
REPORTER OF JUDICIAL DECISIONS

DOCKET NO. 82 0038546S	: SUPERIOR COURT
	: JUDICIAL DISTRICT OF
JOAN O. HOLBROOK,	: MIDDLESEX
v.	: AT MIDDLETOWN
TITUS J. CASAZZA,	: June 10, 1985

DEFENDANT'S PROPOSED PARTIAL REQUESTS TO CHARGE

Pursuant to Section 318 of the Practice Book, defendant hereby submits his partial requests to charge the jury in this action.

1. The plaintiff in this action claims that the defendant made various statements about her conduct as a Tax Assessor in the Town of Westbrook which were false, and which resulted in injury to her reputation. I will now instruct you as to what the plaintiff must prove in order that the defendant be held liable for any damages which the plaintiff may have shown that she suffered from the defendant's statements.

2. The statements made by the defendant concerning the plaintiff were in relation to her actions as a Tax Assessor in the Town of Westbrook. A tax assessor is a public official. *Ocala Star-Banner Co. v. Damron*, 401 U.S. 295, 299 (1971). Statements made about the official conduct of a public official are entitled to a high level of protection under our Constitution. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280, (1964).

3. Specifically, in order for the plaintiff to establish any liability on the part of the defendant, she must prove a number of things to you, and must prove them with convincing clarity. *New York Times Co. v. Sullivan, supra*, 285-286; *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342, (1974); *Dacey v. Connecticut Bar Association*, 170 Conn. 520, 535, (1976). The standard of "convincing clarity," or "clear and convincing evidence," is a higher and more rigorous standard of proof than is generally required in civil cases. In order for the plaintiff to

prove anything to you by clear and convincing evidence, you must be satisfied to a high degree of probability of the truth of the proposition sought to be proved. *Dacey v. Connecticut Bar Association, supra,* 537; *McCormick on Evidence,* 2nd Ed., § 340, p.796. I will now list and discuss what the plaintiff must prove to you by clear and convincing evidence before she may establish any liability on the part of the defendant.

4. First, the plaintiff must prove by clear and convincing evidence that the statements made about her by the defendant, as the evidence has established the content of those statements, were false. *New York Times Co. v. Sullivan, supra,* 279-280; *Garrison v. Louisiana,* 379 U.S. 64, 74 (1964); *Rosenblatt v. Baer,* 383 U.S. 75, 84 (1966); *Wilson v. Scripps-Howard Broadcasting Co.,* 642 F.2d 371, 375, (6th Cir., 1981), *cert. granted,* 454 U.S. 962, *appeal dismissed,* 454 U.S. 1130, (1981); *Goodrich v. Waterbury Republican-American,* 188 Conn. 107, 112, n.6 (1982). The defendant is under no burden of establishing that the statements made about the plaintiff were true. I should note here that the "truth" I am speaking of does not require you to believe in the literal truth of each statement made by the defendant. It is sufficient, instead, if you find that the main charge, or gist, of each such statement is substantially true, *or* that the plaintiff has failed to establish by clear and convincing evidence that the main charge, or gist, of each such statement is false. *Goodrich v. Waterbury Republican-American, Inc.,* 188 Conn. 107, 112-113; (1982); *Strada v. Connecticut Newspapers, Inc.,* 193 Conn. 313, 321-322. Thus, as to the statements complained of by the plaintiff, should you not be satisfied to a high level of probability on the basis of the plaintiff's evidence that the main charge or gist of the statement is false, then you must return a verdict for the defendant.

5. Before proceeding to discuss the additional elements which the plaintiff must prove before you could return a verdict in her favor, I will discuss the issue of truth or falsity as it pertains to some of the claims in this case.

The plaintiff claims that the defendant made statements concerning her performance as a Tax Assessor which appear to fall into two general categories. First, plaintiff claims that the defendant stated that she had lowered assessments on certain properties belonging to family or friends of the plaintiff, and had raised assessments on certain properties belonging to people allegedly in disfavor with the plaintiff. You have heard evidence offered as to these claims. In keeping with the general principle which I outlined above, it is the plaintiff's burden to prove to you, by clear and convincing evidence, that these statements were, in fact, made about her by the defendant, and that they were false. However, if you find from the evidence that the plaintiff was responsible for raising or lowering certain assessments in the manner alleged, you must return a verdict for the defendant even if you believe that the statements made by the defendant carried with them a suggestion of corruption or illegality which you do not believe the evidence has sustained. In other words, a statement which is literally true in its main gist cannot support an action for defamation even if it carries a false and defamatory implication, and even if you believed that it had been made for some improper purpose. *Strada v. Connecticut Newspapers, Inc.*, 193 Conn. 313, 322-325, (1984).

6. The second general category of statements concerning the plaintiff that are involved in this lawsuit concern various actions which the defendant is alleged to have claimed that the plaintiff took in relation to the preparation of the grand list for the Town of Westbrook, and which the defendant is alleged to have stated were in violation of various Connecticut statutes. Once again, on a general level, it is the plaintiff's burden to demonstrate by clear and convincing evidence that any statements shown to have been made by the defendant were false, and if their main gist was, in any particular instance true, then you must return a verdict for the defendant. *Goodrich v. Waterbury Republican-American, supra.* Also again, if you find that the plaintiff has not established the falsity of the statements by clear and convincing evidence, then the fact that any such statement, while literally

true, carries with it a more damaging implication against the plaintiff and which is unsupported by the evidence is irrelevant to your deliberations, and you must return a verdict for the defendant. *Strada v. Connecticut Newspapers, Inc., supra.*

The testimony you have heard concerning allegations that the plaintiff acted in violation of Connecticut law in various respects with regard to the preparation and adoption of the grand list for the Town of Westbrook appears to focus on claimed violations of two types. First, that the plaintiff had improperly made substantive changes to the grand list after it was signed by the Assessors and passed to the Board of Tax Review by submitting revised valuations of certain properties to the Board of Tax Review which did not represent the correction of clerical mistakes and omissions, but rather a reassignment of value to the property by the plaintiff. I instruct you that if you find that the plaintiff did submit substantive changes of the type I just described to the Board of Tax Review after the grand list was signed by the Assessors, or that the plaintiff has not proven to you by clear and convincing evidence that she did not submit any such changes, then the conduct claimed on her part by the defendant was in violation of Connecticut law as alleged by the defendant, and as to any such statements which you find the defendant made concerning the plaintiff, you must return a verdict for the defendant. C.G.S. § 12-60; 18 *Op. Atty. Gen.* 178 (July 19, 1933); *R.F.C. v. Borough of Naugatuck,* 136 Conn. 29 (1949).

The second class of statutory violations which the defendant is claimed to have made against the plaintiff concerns the plaintiff's alleged "unilateral" alterations of the valuations assigned to a number of properties subsequent to the printing of the grand list, but prior to its signing by the Assessors and submission to the Board of Tax Review. There appears to be no dispute that the plaintiff, acting alone, did alter the valuations assigned to a number of properties subsequent to the printing of the grand list, but prior to its signing by the Assessors and submission to the Board of Tax Review. The relevant statute provides, in part, that: "[T]he assessors of

all towns . . . shall . . . view all of the real estate of their . . . municipalit[y], and shall revalue the same for assessment and, in the performance of these duties . . . at least two of the assessors shall act together." C.G.S. § 12-62(a).

If you find on the basis of the evidence that any statements which the defendant made claiming that the plaintiff had acted "unilaterally," improperly, or in violation of law by making such changes in valuation were coupled with statements by the defendant of the factual basis of such an opinion on his part, *and* you find that the plaintiff has not proven by clear and convincing evidence that the main gist of the factual statement was false, then the fact that the the defendant expressed an opinion of impropriety or illegality on the plaintiff's part which you may or may not share would not defeat the fact that a statement of opinion, when made along with disclosure of the factual basis of the opinion is unqualifiedly privileged under our Constitution, may never form the basis of an action for defamation, and you must return a verdict for the defendant. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974); *Goodrich v. Waterbury Republican-American, Inc.*, 188 Conn. 107, 117–118 (1982). On the other hand, if you find that the facts stated by the defendant in support of his expression of opinion have been proven by the plaintiff by clear and convincing evidence to be false, and further find the additional elements which I will discuss for you in a moment, then you may return a verdict for the plaintiff.

7. Even if you have found on the basis of the evidence that the plaintiff has proven by clear and convincing evidence, that is, to a high probability, that the statements made about her were false, she is not entitled to prevail in this action unless you also find that the plaintiff has proven to you by clear and convincing evidence that at the time the defendant made any or each such false statement, he either knew that the statement was not true, or made with statement with reckless disregard for whether it was true or not. *New York Times Co. v. Sullivan, supra,* at 379–380; *Dacey v. Connecticut Bar Association, supra,* at 535; *Moriarty v. Lippe,* 162 Conn. 371, 379 (1972).

As was the case in considering the truth or falsity of the statements, the plaintiff must establish by clear and convincing evidence, that is, to a high probability, that the defendant knew the statements were false when he made them, or that he acted with reckless disregard for their truth or falsity. *Gertz v. Robert Welch, Inc., supra,* at 332; *Garrison v. Louisiana, supra,* at 75–76; *St. Amant v. Thompson,* 390 U.S. 727, 731 (1968); *Dacey v. Connecticut Bar Association, supra,* at 539.

8. By reckless disregard for the truth or falsity of a defamatory statement, I mean that in order to find for the plaintiff on this basis, you must be convinced that when the defendant made the statements in question, he possessed a high degree of awareness of their probable falsity. *Garrison v. Louisiana, supra,* at 75–76; *St. Amant v. Thompson, supra,* at 731; *Curtis Publishing Co. v. Butts,* 388 U.S. 130, 153 (1967); *Moriarty v. Lippe, supra,* at 380.

9. To summarize, before you may return a verdict for the plaintiff, the plaintiff must have proven to you with clear and convincing evidence, that is, the plaintiff must have established to a high degree of probability:

a. That any statement allegedly made about her by the defendant was, in fact, made by the defendant.

b. That any such statement was false in the sense that the main gist of the charge contained in any such statement was false as a matter of fact. As I noted above, any statements of opinion on the defendant's part, if coupled with a statement of the underlying factual basis of the opinion, is absolutely privileged under the Constitution, and may not support a verdict for the plaintiff. This is so even if you believe that the opinion was unwarranted or wrong, or was made by the defendant for some wrongful purpose.

c. In the case of any statements you find the defendant to have made about the plaintiff which, on the basis of the evidence you find with convincing clarity to have been false

and defamatory, the plaintiff must also have proven to you by clear and convincing evidence that at the time the defendant made any such statement, he either knew it was false, or knew to a high probability that it was false.

d. The plaintiff's burden of proof on these issues is cumulative. If you find that she has failed at any step to prove the matters which she is obliged to prove, or has failed in any respect to meet the standard of clear and convincing evidence as to those issues governed by that standard of evidence, then you must return a verdict in favor of the defendant.

THE DEFENDANT

BY: /s/ Steven J. Errante

STEVEN J. ERRANTE, ESQ. FOR
LYNCH, TRAUB, KEEFE AND
SNOW, P.C.
#34876

CERTIFICATION

This is to certify that a copy of the foregoing was hand delivered on this 11th day of June, 1985, to:

Roger Sullivan, Esq.
7 South Main Street
P.O. Box 811
Branford, CT. 06405

/s/ Steven J. Errante

STEVEN J. ERRANTE, ESQ.

PRELIMINARY STATEMENT OF ISSUES

The defendant-appellant in the above-entitled matter, pursuant to Section 3012 of the Practice Book, hereby makes a preliminary statement of the issues intended for presentation on appeal:

In a defamation action alleging that a member of the Board of Assessors of the Town of Westbrook libeled and slandered the plaintiff, the Chairman of said Board, by statements that the plaintiff made unilateral changes on the revaluation of the Westbrook Grand List benefiting the plaintiff's family and friends, where the jury returned a verdict for the plaintiff, did the court err:

1. In refusing to direct a verdict for the defendant, in submitting the case to the jury and in refusing to set aside the verdict and direct judgment for the defendant, where the evidence as a matter of law was insufficient on a clear and convincing evidentiary standard as to falsity of the utterances and malice?

2. In submitting the case to the jury, in refusing to set aside the verdict, and in refusing to direct judgment for the defendant, where the evidence was clear and unequivocal that the statements made by the defendant about the plaintiff's conduct as the Chairman of the Board of Assessors were true?

3. In its charge and supplemental charge with respect to the standard of proof on falsity and malice?

4. In refusing to declare a mistrial where the plaintiff's counsel's questions suggested that the Town of Westbrook agreed to pay the defendant's attorney's fees and expenses, and by inference, any judgment entered?

5. In excluding evidence concerning the later sale price of marinas alleged to have been undervalued by the plaintiff, showing that certain marinas sold for three or four times their assessed value shortly after the effective date of the revaluation?

6. In refusing to charge as requested, and in refusing to submit interrogatories proposed by the defendant to the jury?

COMPLAINT

FIRST COUNT

1. The plaintiff, Joan O. Holbrook, is a resident of the Town of Westbrook, Connecticut.

2. The defendant, Titus J. Casazza, is a resident of the Town of Westbrook, Connecticut.

3. The plaintiff for many years has been an Assessor and Chairman of the Board of Assessors in the Town of Westbrook, Connecticut. For many years past the plaintiff has resided in and conducted her business in Westbrook and adjacent communities, has served said community as a public official and a business person, has enjoyed a good opinion and esteem of the residents and businesses of said community, and has established among the people of said community, an excellent reputation as an Assessor, and for business skill and ability, for honesty, integrity, and good character. Plaintiff, through her business activity and her public service to the people of her community, and as an Assessor and as Chairman of the Board of Assessors of the Town of Westbrook, has extended her aforesaid reputation generally as a business woman and as an Assessor among the public officials, bankers, businessmen, and the public generally in the Town of Westbrook, Middlesex County and throughout other counties within the State of Connecticut.

4. At various times since January of 1982, the defendant, Titus J. Casazza, uttered and published false statements concerning the plaintiff, to wit:

(a) That the plaintiff had violated Section 12-62 of the Connecticut General Statutes in that the plaintiff made changes in the October 1, 1981 Westbrook Grand List unilaterally;

(b) That the plaintiff violated Section 12-60 of the Connecticut General Statutes in that substantive and unauthorized changes were made to the 1981 Grand List, subsequent to the official signing of the List;

(c) That the plaintiff changed and/or erased the assessed value of four hundred and forty-five (445) properties in the Town of Westbrook, subsequent to the printing of the 1981 Grand List, but prior to the signing of the Grand List by the plaintiff; and

(d) That the plaintiff reduced the assessments by making changes on the data processing change slips submitted to the Board of Tax Review of the Town of Westbrook by the plaintiff; and

(e) That the plaintiff had reduced the assessments on properties owned by members of her family;

(f) That the plaintiff had reduced assessments on properties owned by her friends;

(g) That the plaintiff had increased the assessments on properties owned by those persons who were in her disfavor.

5. At various times and particularly by letter dated April 29, 1982, defendant, Titus J. Casazza, through false accusation, innuendo and inference, created an adverse reflection on plaintiff's reputation and character by publishing a request for an investigation alleging that the plaintiff violated the provisions of Section 12-62 of the Connecticut General Statutes and Section 12-60 of the Connecticut General Statutes.

6. The publication described and referred to in paragraphs 4 and 5 were false, malicious and/or done with reckless disregard of the truth.

7. On September 22, 1982, the plaintiff, acting through her attorney, pursuant to Connecticut General Statutes

52-237, requested the defendant retract said libelous charges in as public a manner as that in which they were made, but said defendant failed to do so within a reasonable time.

8. Said libelous charges were read by friends and relatives residing in the Town of Westbrook and in the surrounding communities, by other persons who are assessors in the neighboring communities, and within the State of Connecticut, and by all persons generally within Middlesex County and those counties bordering the Connecticut shore line, and have resulted in injury to the profession of the plaintiff and her means of livelihood, and injury to her character and reputation; has caused her to be held up to public ridicule and humiliation; has caused her to be held up to scandal and reproach; has interfered with her in the performance of her profession; and has caused her great annoyance and embarrassment; has prejudiced plaintiff and injured her reputation for honesty, integrity, and ability in the performance of her duties as an assessor, and in the conduct of her profession, whereby she has suffered heavy pecuniary loss and her good name and character has been greatly injured.

9. Said libelous charges containing the false, libelous, and defamatory matter herein complained of has caused plaintiff to suffer great mental anguish, pain, suffering and humiliation.

SECOND COUNT

1.-9. Paragraphs 1 through 9 inclusive of the First Count are made paragraphs 1 through 9 of the Second Count.

10. At various times since January of 1982, and particularly at hearings of various boards and commissions of the Town of Westbrook and of the State of Connecticut, and at other various times to reporters of various newspapers circulated within the County of Middlesex and the Connecticut shore line area, the defendant, in the hearing of others, uttered the false statements and created the false innuendo,

accusations and inferences described in Paragraphs 4 and 5 of the First Count.

11. The utterances referred to in the preceding paragraph were false, malicious, and/or done with reckless disregard of the truth.

12. Said libelous charges were heard and read by friends and relatives residing in the Town of Westbrook, and in the surrounding communities, by other persons who are assessors in the neighboring communities, and within the State of Connecticut, and by all persons generally within Middlesex County and those counties bordering the Connecticut shore line, and have resulted in injury to the profession of the plaintiff and her means of livelihood, and injury to her character and reputation; has caused her to be held up to public ridicule and humiliation; has caused her to be held up to scandal and reproach; has interfered with her in the performance of her profession; and has caused her great annoyance and embarrassment; has prejudiced plaintiff and injured her reputation for honesty, integrity, and ability in the performance of her duties as an assessor, and in the conduct of her profession, whereby she has suffered heavy pecuniary loss and her good name and character has been greatly injured.

13. Said libelous charges containing the false, libelous, and defamatory matter here complained of has caused plaintiff to suffer great mental anguish, pain, suffering and humiliation.

WHEREFORE, the plaintiff claims:

1. Money damages;

2. An order requiring the defendant to publish a retraction of his libelous and slanderous statements in as public a manner as that in which they were made.

3. Exemplary damages in an amount equal reasonable attorneys' fees plus costs and other allowable costs.

4. Such other and further relief as this court may appear just and reasonable.

Dated at Madison, Connecticut, this 19th day of November, 1982.

PLAINTIFF,
BY /s/ George J. Kinsley,
Her Attorney

Filed November 26, 1982

AMENDED ANSWER

ANSWER

FIRST COUNT

1. As to paragraphs 1 and 3, the defendant has insufficient knowledge with which to form a belief, and therefore, leaves the plaintiff to her proof.

2. Paragraph 2 is admitted.

3. Paragraphs 4a, 4b, 4d, 4e, and 4f are admitted in that they were uttered. It is denied that they are false statements.

4. Paragraphs 4c and 4g are denied.

5. Paragraphs 5 and 6 are denied.

6. As to paragraphs 7, 8 and 9, the defendant has insufficient knowledge with which to form a belief, and therefore, leaves the plaintiff to her proof.

SECOND COUNT

1-9 Answer to Paragraphs 1 through 9 of the First Count are hereby made answers to paragraphs 1 through 9 of the Second Count.

10. Paragraphs 10 and 11 are denied.

11. As to Paragraphs 12 and 13, the defendant has insufficient knowledge with which to form a belief, and therefore, leaves the plaintiff to her proof.

BY WAY OF FIRST SPECIAL DEFENSE

If the defendant printed and published any or all of the statements and words alleged in the plaintiff's declaration,

which the defendant denies, such statements and words were true in substance and fact.

BY WAY OF SECOND SPECIAL DEFENSE

If it shall appear that he ever printed and published the words as alleged by the plaintiff that the same were stated to a public officer in the course of his duty as such officer and as such were privileged communications.

THE DEFENDANT
BY: /s/ STEVEN J. ERRANTE, ESQ., FOR
LYNCH, TRAUB, KEEFE AND
SNOW, P.C.

Filed June 12, 1985

REPLY

The plaintiff denies the allegations of the defendant's special defenses.

THE PLAINTIFF
BY /s/ Roger Sullivan,
Attorney for the Plaintiff

Filed June 13, 1985

COMPLAINT

FIRST COUNT

1. The plaintiff, Joan O. Holbrook, is a resident of the Town of Westbrook, Connecticut.

2. The defendant, Gala H. Nordquist, is a resident of the Town of Westbrook, Connecticut.

3. The plaintiff for many years has been an Assessor and Chairman of the Board of Assessors in the Town of Westbrook, Connecticut. For many years past the plaintiff has resided in and conducted her business in Westbrook and adjacent communities, has served said community as a public official and a business person, has enjoyed a good opinion and esteem of the residence and businesses of said community, and has established among the people of said community, an excellent reputation as an Assessor, and for business skill and ability, for honesty, integrity, and good character. Plaintiff, through her business activity and her public service to the people of her community, and as an Assessor and as Chairman of the Board of Assessors of the Town of Westbrook, has extended her aforesaid reputation generally as a business woman and as an Assessor among the public officials, bankers, businessmen, and the public generally in the Town of Westbrook, Middlesex County and throughout other counties within the State of Connecticut.

4. At various times since January of 1982, the defendant, Gala H. Nordquist, uttered and published false statements concerning the plaintiff, to wit:

(a) That the plaintiff had violated Section 12-62 of the Connecticut General Statutes in that the plaintiff made changes in the October 1, 1981 Westbrook Grand List unilaterally;

(b) That the plaintiff violated Section 12-60 of the Connecticut General Statutes in that substantive and unauthorized changes were made to the 1981 Grand List, subsequent to the official signing of the List;

(c) That the plaintiff changed and/or erased the assessed value of four hundred and forty-five (445) properties in the Town of Westbrook, subsequent to the printing of the 1981 Grand List, but prior to the signing of the Grand List by the plaintiff; and

(d) That the plaintiff reduced the assessments by making changes on the data processing change slips submitted to the Board of Tax Review of the Town of Westbrook by the plaintiff; and (e) That the plaintiff had reduced the assessments on properties owned by members of her family;

(f) That the plaintiff had reduced assessments on properties owned by her friends;

(g) That the plaintiff had increased the assessments on properties owned by those persons who were in her disfavor.

5. At various times and particularly by letter dated April 29, 1982, defendant, Gala H. Nordquist, through false accusation, innuendo and inference, created an adverse reflection on plaintiff's reputation and character by publishing a request for an investigation alleging that the plaintiff violated the provisions of Section 12-62 of the Connecticut General Statutes and Section 12-60 of the Connecticut General Statutes.

6. The publications described and referred to in paragraphs 4 and 5 were false, malicious and/or done with reckless disregard of the truth.

7. On September 22, 1982, the plaintiff, acting through her attorney, pursuant to Connecticut General Statutes 52-237, requested the defendant retract said libelous charges in as public a manner as that in which they were made, but said defendant failed to do so within a reasonable time.

8. Said libelous charges were read by friends and relatives residing in the Town of Westbrook, and in the surrounding communities, by other persons who are assessors in the neighboring communities, and within the State of Connecticut, and by all persons generally within Middlesex County and those counties bordering the Connecticut shore line, and have resulted in injury to the profession of the plaintiff and her means of livelihood, and injury to her character and reputation; has caused her to be held up to public ridicule and humiliation; has caused her to be held up to scandal and reproach; has interfered with her in the performance of her profession; and has caused her great annoyance and embarrassment; has prejudiced plaintiff and injured her reputation for honesty, integrity, and ability in the performance of her duties as an assessor, and in the conduct of her profession, whereby she has suffered heavy pecuniary loss and her good name and character has been greatly injured.

9. Said libelous charges containing the false, libelous, and defamatory matter herein complained of has caused plaintiff to suffer great mental anguish, pain, suffering and humiliation.

SECOND COUNT

1.-9. Paragraphs 1 through 9 inclusive of the First Count are made paragraphs 1 through 9 of the Second Count.

10. At various times since January of 1982, and particularly at hearings of various boards and commissions of the Town of Westbrook and of the State of Connecticut, and at other various times to reporters of various newspapers circulated within the County of Middlesex and the Connecticut shore line area, the defendant, in the hearing of others, uttered the false statements and created the false innuendo, accusations and inferences described in Paragraphs 4 and 5 of the First Count.

11. The utterances referred to in the preceding paragraph were false, malicious, and/or done with reckless disregard of the truth.

12. Said libelous charges were heard and read by friends and relatives residing in the Town of Westbrook, and in the surrounding communities, by other persons who are assessors in the neighboring communities, and within the State of Connecticut, and by all persons generally within Middlesex County and those counties bordering the Connecticut shore line, and have resulted in injury to the profession of the plaintiff and her means of livelihood, and injury to her character and reputation; has caused her to be held up to public ridicule and humiliation; has caused her to be held up to scandal and reproach; has interfered with her in the performance of her profession; and has caused her great annoyance and embarrassment; has prejudiced plaintiff and injured her reputation for honesty, integrity, and ability in the performance of her duties as an assessor, and in the conduct of her profession, whereby she has suffered heavy pecuniary loss and her good name and character has been greatly injured.

13. Said libelous charges containing the false, libelous, and defamatory matter herein complained of has caused plaintiff to suffer great mental anguish, pain, suffering and humiliation.

WHEREFORE, the plaintiff claims:

1. Money damages;

2. An order requiring the defendant to publish a retraction of her libelous and slanderous statements in as public a manner as that in which they were made.

3. Exemplary damages in an amount equal to reasonable attorneys' fees plus costs and other allowable costs.

4. Such other and further relief as this court may appear just and reasonable.

Dated at Madison, Connecticut, this 19th day of November, 1982.

PLAINTIFF
By /s/ George J. Kinsley,
Her Attorney

Filed November 26, 1982

ANSWER

The defendant in the above entitled action, GALA H. NORDQUIST, answers the plaintiff's complaint dated November 19, 1982, as follows:

FIRST COUNT:

1. As to Paragraphs 1, 3, 7, 8 and 9, the defendant has insufficient knowledge of the facts alleged therein and therefore leaves the plaintiff to her proof.

2. The defendant admits Paragraph 2.

3. As to Paragraphs 4 (a), (b), (c), (d), (e), (f), (g), 5, and 6, the defendant denies the allegations contained therein.

SECOND COUNT:

As to Paragraphs 1, 3, 7, 8, 9, 11, 12 and 13, the defendant has insufficient knowledge of the facts alleged therein and therefore leaves the plaintiff to her proof.

2. The defendant admits Paragraph 2.

3. As to Paragraphs 4 (a), (b), (c), (d), (e), (f), (g), 5, 6 and 10, the defendant denies the allegations contained therein.

THE DEFENDANT
By /s/ David J. Peska
For Peska, Sipples & Munro
Her Attorneys

Filed November 1, 1984

SPECIAL DEFENSE

If it shall appear that she ever printed and published the words as alleged by the plaintiff, that the same were stated to a public officer in the course of his duty as such officer and as such were privileged communications.

THE DEFENDANT
By /s/ David J. Peska
For Peska, Sipples & Munro
Her Attorneys

Filed May 10, 1985

REPLY

The plaintiff denies the allegations of the defendant's special defense.

THE PLAINTIFF
BY /s/ Roger Sullivan
Attorney for Plaintiff

Filed June 13, 1985

INTERROGATORIES

1. Has the plaintiff proved by a preponderance of the evidence that the defendant uttered and published any defamatory statements about her?

Yes X No _____

2. Has the plaintiff proved by clear and convincing evidence the falsity of any of the defamatory statements you may have found?

Yes X No _____

3. Has the plaintiff proved by clear and convincing evidence that the defendant acted with actual malice in uttering and publishing any defamatory statement you have so found to have been uttered and published?

Yes X No _____

[signature illegible]
Foreperson

June 14, 1985

PLAINTIFF'S VERDICT

In this case the Jury further finds the issues for the Plaintiff Joan O. Holbrook, as against the Defendant Titus J. Casazza and therefore finds for said Plaintiff to recover of the Defendant Titus J. Casazza

General damages $21,000
Special damages $135,750
Exemplary damages $52,251 plus 5,860

[signature illegible]
Foreperson

June 14, 1985

PLAINTIFF'S VERDICT

In this case the Jury further finds the issues for the Plaintiff Joan O. Holbrook as against the Defendant Gala H. Nordquist and therefore finds for said Plaintiff to recover of the Defendant Gala H. Nordquist

General damages $7,000
Special damages $45,250
Exemplary damages $17,416 plus 1,950

[signature illegible]
Foreperson

RESULTS OF CASAZZA'S INVESTIGATION

1. The evidence produced during the examination of the defendant Casazza at trial demonstrated that he conducted an independent investigation of reductions in assessments on property owned by individuals related to the plaintiff (T.pp. 147a-155a). At the March 10th meeting, Casazza inquired of Mr. Viogrande whether he had made changes to the junkyard, farmlands, marina or Porton valuations and Mr. Viogrande stated that he had not (T.pp. 830-833).

2. Exhibits K through S (T.pp. 922-924) were field cards pertaining to properties on Essex Road and were discussed individually by Casazza who demonstrated that each of the properties referred to in these exhibits were owned by relatives of the plaintiff.

Exhibit K was a property owned by an individual married to Sanford Holbrook's daughter who is related to Alan Holbrook, the plaintiff's husband (T.p. 924). The field card for this property showed a twenty percent reduction in fair market value for unfinished construction (T.p. 927). The revaluation company had noted on this card that seven attempts were made to gain access to the premises which were unsuccessful and that the property was assessed as being finished. Although the certificate of occupancy for this property was not issued until 1984 (T.p. 1084) Casazza verified that it was occupied in 1981 (T.p. 1158).

As to the Wennerberg property (Exhibit L), Casazza determined that the plaintiff's husband and his brother had taken back a purchase money mortgage on said property in January of 1980 and had a financial interest in it (T.p. 928). The plaintiff determined this by researching the land records and reading the mortgage deed for this property (T.pp. 928-929; Defendant's exhibits S & T; T.pp. 930, 954, 955). The plaintiff's handwriting on the field card for this property indicated that a ten percent deduction and an additional forty percent deduction was made in the valuation of such property (T.p. 932).

Defendant's Exhibit M. Demonstrated that the plaintiff's husband was a part owner of the property in 1981 (T.p. 934) in a turnpike interchange or industrial zone and that a Holbrook relative was involved in ownership of the property consistently from 1979 through 1982. On this exhibit the original figures were erased and new figures were inserted which reduced the per acre value from $75,000.00 per acre to $4,500.00 per acre (T.p. 938).

Exhibit N pertained to property owned by Pauline Redway who as far as the defendant knew was connected to the Holbrook family in 1981 (T.p. 942).

Defendant's Exhibit O showed an ownership interest held by the plaintiff's husband, her husband's aunt, her brother-in-law's daughter and a brother-in-law (T.p. 943). The revaluation company's assessment was $55,000.00 per acre on the field card for this property which was reduced in the plaintiff's handwriting to $4,500.00 per acre (T.p. 944).

Exhibit P was a field card for industrial-zoned property showing ownership by members of the Holbrook family where a 5-digit valuation was reduced to a 4-digit valuation, but the figures were unintelligible (T.p. 949).

Exhibit Q demonstrates that property owned by members of the Holbrook family was classified as landlocked and that the plaintiff erased the original values and adjusted the total value (T.p. 953).

Exhibit R indicates ownership by Sanford C. and Joyce G. Holbrook of property on which the revaluation company had established a value of $26,000.00 per acre and the plaintiff had inserted a ten percent deduction showing the value to be $23,400.00 per acre (T.p. 954). Casazza contended that the property was used commercially despite its limited utilization classification and for that reason there should be no ten percent deduction for limited utility. Id.

Defendant Casazza testified that other properties similarly situated to the Holbrook properties were not treated in the same manner by the plaintiff as those discussed above (T.p. 956).

3. The defendant Casazza testified extensively (T.pp. 981-1028) regarding the basis for his belief that the $100,000.00 per acre valuation put on the Holbrook marina was inadequate (T.p. 105b).[1]

Defendant Casazza inquired of Mr. Viogrande as to how the $100,000.00 per acre valuation was determined for the Holbrook marina (T.pp. 145a, 148a). Mr. Viogrande initially suggested a value of $200,000.00 per acre (T.p. 1396) but conceded to plaintiff's suggestion of $100,000.00 per acre value prior to discovering that the sale of the Holbrook marina was effected for $1,200,000.00 (T.p. 1398). Mr. Viogrande testified that had he known of the impending sale of the Holbrook marina before submitting the revaluation company's assessment of it, his valuation of marina property would have been higher (T.p. 1416).

Nordquist's testimony as confirmed by Mr. Viogrande, clarified that she was present in the assessor's office when the marina valuations were discussed in December 1981 but did not participate or concur in the values decided upon (T.pp. 1067-1070, 1407, 1442-1443, 1459). Mr. Viogrande testified that the per acre value placed on the marinas in 1981 was "not fairly within the range of choice for an assessor to make" and that use of that figure violated his principles as an appraiser (T.p. 1445).

The court determined that the subsequent sale price of the marina was not admissible in evidence (T.p. 1001).

---

[1] The two marina properties owned by plaintiff's husband at 633 Boston Post Road and 34 Hammock Road South are referred to as the "Holbrook (or Patchoug) Marina" for purpose of this brief.

4. An additional reduction of ten percent was made in the valuation of the Porton property on the basis that it was a rear lot (Defendant's exhibit H; T.pp. 869-870, 1157). Mr. and Mrs. Porton were individuals whom Casazza knew to be friends of the plaintiff whom he had seen visiting the plaintiff and discussing social plans in the assessor's office (T.p. 875). Casazza's testimony regarding the Porton property (T.pp. 870-876) evidences his concern that the property was purchased in 1979 for $135,000.00 according to the tax stamps on the field card and that the revaluation company's estimate of fair market value was $94,740.00 but that plaintiff had given an additional ten percent deduction for a supposed rear lot which was in fact, according to defendant, an easement to get to the Porton property (T.pp. 1076-1080, 1167).

5. The field card for the Woodstock junkyard property showed erasures (T.p. 914) and in addition its value had been changed in the abstract after printing (T.p. 876). The field card for the Woodstock property was presented as Defendant's exhibit J (T.p. 913). When defendant Casazza detected the erasure on the Woodstock junkyard card, he referred to the original figures on the abstract and found that the original assessment on the abstract "in round numbers" was approximately $30,750.00 higher than that entered by the plaintiff (T.p. 915). The original assessed value of the junkyard was $112,270.00 (T.p. 916). Subsequent to the 1981 revaluation, the assessed value of the Woodstock property, was increased from $81,520.00 to $150,320.00 but later reduced to $114,330.00 (T.p. 917). Casazza testified that the only relationship between the plaintiff and Mr. Woodstock of which he knew was that they had served together on the Board of Finance and that Mr. Woodstock visited the assessor's office on one occasion when the plaintiff left the office with him (T.pp. 917-918). Casazza also testified that he relied upon a letter which he found in the Town's files dated February 5, 1982 in which the plaintiff requested that Mr. Viogrande reduce the assessment on the Woodstock junkyard to $50,000.00 per acre (Defendant's exhibit I, T.p. 878).

Mr. Viogrande testified that he disputed the value placed on the Woodstock junkyard and refused to make the reduction which the plaintiff insisted on making (T.p. 1384). Casazza inquired of Mr. Viogrande as to whether or not he reduced the value of the Woodstock junkyard and learned that he had not (T.p. 146a). Casazza also verified with Mrs. Bushnell, Chairman of the Board of Tax Review, that Mr. Woodstock had not appeared before the Board to seek a reduction in valuation (T.pp. 863, 1028).

6. Defendant Casazza determined that there were two clearly identifiable lots on the town assessor's map and deed for the Casey property which had been assessed by the plaintiff as one lot by reducing the value (T.p. 958; Plaintiff's Exhibits U & V; T.p. 964). By so doing, the plaintiff reduced the value by $30,710.00 (T.p. 967; exhibit W; T.p. 970).

7. Defendant's Exhibits X and Y pertain to the Daley and Dunn properties for which the plaintiff had changed the values from $75,000.00 per acre to $4,500.00 per acre and classified the properties as having landlocked rear acres (T.pp. 972, 1142). These were turnpike interchange properties for which the revaluation company had established the base price of $75,000.00 per acre. Defendant Casazza was of the opinion that these properties were not landlocked by virtue of having checked the assessor's maps and subdivision plans which showed a town road accessing the property even though construction of that road had not been completed (T.pp. 973, 974, 1143, 1161). Casazza reiterated that he checked these maps before making his accusations of the plaintiff (T.p. 976; Defendant's Exhibit Z; T.p. 977). In addition, the defendant checked the record of town meetings to determine if the Town had accepted the road leading up to these properties as a town road (T.p. 978). To the best of the defendant's recollections he consulted these documents before making his accusations against the plaintiff (T.p. 979).

EVIDENCE CONCERNING ERASING

Mr. Walter Birck, assessor from a neighboring town and a former President of the Connecticut Assessor's Association, testified that he had never approved of changing field sheet valuations by erasure as a practice. He could not name one assessor or one town who did consider it acceptable (T.p. 478).

Mr. Mauro Bisaccia, member of the Westbrook Board of Assessors from 1960 to 1980, testified that it was not "an acceptable procedure in a revaluation year" to make erasures on the field cards prior to the signing of the grand list (T.p. 1280). Mr. Bisaccia also testified that in his twenty years as a Westbrook assessor he never adjusted an assessment without "turning it over" to another member of the Board of Assessors (T.p. 1277).

A. OK.

Q. All right.

MR. ERRANTE: With the court's permission, I'd like to read these two exhibits to the jury, Your Honor.

THE COURT: You may.

MR. ERRANTE: Thank you. First let me read to you defendant's exhibit B, which is a letter to Donald Zimbouski by the plaintiff, Joan Holbrook, dated March 26th, 1982. Dear Mr. Zimbouski, today I spoke with Rick Wall regarding a serious problem which has arisen on our Board of Assessors in Westbrook, and he asked me to write to you requesting in writing your opinion as what was the law. We have just completed a revaluation in Westbrook and the Board of Tax Review have completed their hearings and duties. After our abstract was signed by two members of the Board of Assessors and after the B.T.R. hearings, B.T.R. being Board of Tax Review, one assessor now says that because I, a chairperson made changes without the approval of the Board as a whole, the Board of Assessors is at this point going to raise all these assessments back up again. According to Rick and Fred Schumora (phonetic), the Board of Assessors has absolutely no authority to do anything to the 10-1-81 list, and of course, they will have no authority whatsoever after July 1st, 1982, as the Town voted to disband the Board and hire a professional assessor then. Our Board works part-time and the revaluation team was very late and lagging behind throughout the last few months, thus necessitating my reviewing values with them, changing them when necessary with no time to call Board meetings to discuss same with the Board. I also did not feel it was my responsibility to call the other assessors to check on

the revaluation, as this was their responsibility as assessors, too. Our first selectman as well as myself are very concerned with the repercussions if this were to occur. Would you be so kind as to send me something in writing along with the pertaining Statutes. We would appreciate an early reply if it is convenient as the two remaining members of the Board of Assessors have indicated they are immediately going to enforce this action. Many thanks. Regards, Joan O. Holbrook. The response by Mr. Zimbouski dated April 8th, 1982. This is to acknowledge receipt of your letter of March 26th, 1982, concerning the recent revaluation conducted in the Town of Westbrook for its October 1st, 1981, grand list. It is my understanding that the changes were made in the recommended values submitted by the revaluation firm retained by the Town of Westbrook to assist the assessors in the revaluation and that such changes were made prior to the filing of the abstract with the Town clerk within the prescribed time limit in accordance with Section 12-55 of the Connecticut General ***

PORTION OF RESPONDENT'S APPELLATE BRIEF

In January of 1982, prior to any controversy, Casazza sought and obtained a wetland reduction in the value of his own property (T.pp. 818, 819: App. 40A). Upon learning of this, Holbrook questioned him on the use of his position as an assessor to obtain the reduction (App. 41A, 42A). Casazza angrily denied any wrongdoing (T.p. 63) but did not return to the assessor's office until February 23, 1982 (T.pp. 562, 569; App. 44A, 66A); when he embarked on a private investigation of the assessors' records with a view to determining any misconduct on the part of Holbrook in her work as an assessor (T.pp. 64, 819; App. 21A, 67A). Until then, he had no criticism of the plaintiff's work as an assessor (App. 18A, 43A).